SUPREME COURT OF THE UNITED STATES.

No. 586.

EDWARD DUPASSEUR, PLAINTIFF IN ERROR,

VS.

ALBIN ROCHEREAU.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 **1909. Supreme court, State of Louisiana.**

Sixth district court for the parish of Orleans.

ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR.
} No. 18274.

Petition.—Filed June 7th, 1866.

To the honorable the sixth district court of New Orleans:

The petition of Albin Rochereau, residing in the city of New Orleans, respectfully represents:

That Pierre Sauvé, of the city of New Orleans, is justly and truly indebted unto your petitioner in the sum of thirty-five thousand dollars, with interest thereon at the rate of eight per cent. per annum, from the 26th February, 1861, until final payment; and in the further
2 amount of five per cent. in the aggregate amount of the aforesaid
capital & interest, and the further sum of dollars of judicial costs; being the amount of a judgment rendered against the said Sauvé and in favor of your petitioner by this honorable court, under date of the 15th of March, 1866, in the case numbered 18001 of the docket thereof.

That said judgment was based upon a debt due to petitioner by the said Sauvé represented by nineteen promissory notes subscribed by him, payable to his own order and by him endorsed and more fully described as follows, viz: three for three thousand dollars each; three for two thousand dollars each; six for fifteen hundred dollars each; six for one thousand dollars each; and one for five thousand dollars, all dated the 26th February, 1858, and payable at one year from date, at the Citizens Bank in New Orleans, and bearing interest at the rate of eight per cent. per annum, from maturity till final payment.

And your petitioner further shows that, by authentic act passed before Theodore Guyol, notary public, under date of the 26th February, 1858, the said Sauvé, being then the owner of the property hereinafter de-
3 scribed and acknowledging himself in said act to be indebted to
your petitioner in the amount of the aforesaid notes & interest; & further binding himself to pay counsel fees thereon at the rate of five per cent. in case of judicial proceedings for the collection thereof, did grant upon the said property a special mortgage in your petitioner's favor to secure the said notes and interest; and the said property is more fully described as follows, viz:

A sugar plantation situated in the parish of St. Charles, on the right bank of the Mississippi River, at about twenty-one miles above the city of New Orleans, composed of two tracts of land, one having a front of fourteen arpents on said river by a depth of seventy-five arpents; and the other having a front of four arpents & twenty toises by a depth of eighty arpents; together with sugar-house and other buildings thereon, the stock, cattle, mules, farming-utensils & implements of husbandry thereto belonging, as well as a number of slaves then thereto attached; he, the said Sauvé promising not to alienate or encumber the said lands to the prejudice of the aforesaid mortgage; which act of mortgage was duly recorded in the office & book of mortgages in & for the par-
4 ish of St. Charles, under the date of the 20th of March, 1858.

That the said mortgage was recognized & declared good & valid by the judgment above referred to; and that the premises will more fully appear by the said notes and a duly certified copy of the said act of mortgage and a certificate of the registry thereof, all herewith filed for reference, as well as from the record of the said suit, No. 18001, on file in the clerk's office of this hon. court, to which reference is had.

Now your petitioner avers that the aforesaid debt composed of the amount of said notes & interest, and the said additional sum of five per cent. on the aggregate amount thereof, and $, costs of suit, is still due & unpaid, and that petitioner has in vain demanded payment thereof of the said Sauvé, more than thirty days prior to the institution of the present action.

That one Edward Dupasseur, residing in this city of New Orleans, has taken and now holds possession of the said plantation as owner thereof; that said plantation is affected in his hands with the special mortgage hereinafter set forth, resulting from the said act of the 26th February, 1858, and its inscription as aforesaid in the said parish of St. Charles, and is bound for the full amount thereof; and
5 that in the premises the said Dupasseur is bound either to pay to your petitioner the amount thereof, or to relinquish & deliver up the said mortgaged property to be sold according to law to satisfy the same.

Wherefore your petitioner prays that the said Dupasseur, who resides in the city of New Orleans, be cited to answer this petition, & that, after due proceedings, there be judgment herein declaring the said property affected in his hands, with the mortgage herein set forth, and that he be ordered to pay to your petitioner the said sum of thirty-five thousand dollars, with interest thereon at the rate of eight per cent. per annum from the 26th February, 1861, till final payment; and five per cent. on the aggregate of said capital & interest, and dollars, costs incurred in said suit 18001, or to relinquish and deliver up said mortgaged property, to be sold according to law, to satisfy the same. He also prays for his costs herein and for all & general relief.

(Signed) JOHNSON, DENIS, BERRAULT & LEGENDRE,
(Signed) BRADFORD, LEA & FINNEY, *Att'ys of Pl'ff.*

6 *Promissory notes annexed to petition.—Filed June 7th,* 1866.

[50 c. U. S. I. R. stamp, cancelled.]
$1,000.00.] NEW ORLEANS, *February 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, one thousand $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 14984.
(Signed) P. SAUVÉ.
Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, & without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29th, 1860.

(Signed) **P. SAUVÉ.**

Ne varietur. New Orleans, Feb'y 26th, 1858.

(Signed) **THEO. GUYOL,** *Not. Pub.*

$1,000.00.] NEW ORLEANS, *February 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, one thousand $_{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) **P. SAUVÉ.**

No. 14988. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

[50 c. U. S. I. R. stamp, cancelled.]

(Endorsement on face of note:)

By consent, and without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29, 1860.

(Signed) **P. SAUVÉ.**

Ne varietur. New Orleans, Feb'y 26, 1858.

(Signed) **THEO. GUYOL,** *Not. Pub.*

$1,000.00.] NEW ORLEANS, *Feb'y 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, one thousand $_{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) **P. SAUVÉ.**

[U. S. I. R. stamp, 50 c., cancelled.]

No. 14990. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to this mortgage, the payment of this note is postponed to the 26th of Feb'y, 1861, interest being paid in advance.

8 N. Orleans, Feb'y 29th, 1860.

(Signed) **P. SAUVÉ.**

Ne varietur. N. Orleans, Feb'y 26th, 1858.

(Signed) **THEO. GUYOL,** *Not. Pub.*

$1,000.00.] NEW ORLEANS, *February 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, one thousand $_{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[U. S. I. R. stamp, cancelled. 50 c.]

No. 14980. Due 26th March, 1861.
(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to this mortgage, the payment of this note is postponed to the 26 of Feb'y, 1861, interest being paid in advance.

New Orleans, Feb'y 29, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,000.00.] NEW ORLEANS, *Feb'y 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, one thousand dollars, value received,
9 with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[50 c. U. S. I. R. stamp, cancelled.]

No. 14983. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to this mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

N. Orleans, Feb'y 29, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,000.00.] NEW ORLEANS, *February* 26, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, one thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[U. S. I. R. stamp, cancelled. 50 c.]

No. 14981. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, & without novation to the mortgage, the payment of this note is postponed to the 26 of Feb'y, 1861, interest being paid in advance.

New Orleans, Feb'y 29th, 1860.
10 (Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,500.00.] NEW ORLEANS, *February 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, fifteen hundred $_{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.
(Signed) P. SAUVÉ.

[U. S. I. R. stamp. 25 c.] [U. S. I. R. stamp, cancelled. 25 c.]

No. 14982. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation on the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29th, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,500.00] NEW ORLEANS, *February* 26, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, fifteen hundred $_{100}$ dollars, value
11 received, with interest at the rate of eight per cent. per annum from maturity until paid.
(Signed) P. SAUVÉ.

[U. S. I. R. stamp, cancelled. 25 c.] [U. S. I. R. 50-c. stamp, cancelled.]

No. 14991. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,500.00.] NEW ORLEANS, *Feb'y 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, fifteen hundred $_{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[U. S. I. R. stamp, cancelled. 25 c.] [U. S. I. R. stamp, cancelled. 25 c.] [U. S. I. R. stamp, cancelled. 25 c.]

No. 14978. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

12 N. O., Feb'y 29, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,500.00.] NEW ORLEANS, *February* 26, 1858.

One year after date, I promise to pay to the order of myself, at the Citizen's Bank in this city, fifteen hundred $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[50-c. U. S. I. R. stamp, cancelled.] [25-c. U. S. I. R stamp, cancelled.]

No. 14986. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to the mortgage, the payment of this note is postponed to the 26 of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29th, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,500.00.] NEW ORLEANS, *February 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizen's Bank in this city, fifteen hundred $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from
13 maturity until paid.

(Signed) P. SAUVÉ.

[25-c. U. S. I. R. stamp, cancelled.] [50-c. U. S. I. R. stamp, cancelled.]

Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to the mortgage, the payment of this note is postponed to the 26th of Feb'y, 1861, interest being paid in advance.

New Orleans, Feb'y 29th, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$1,500.00.] NEW ORLEANS, *February* 26, 1858.

One year after date, I promise to pay to the order of myself, at the Citizen's Bank in this city, fifteen hundred $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[25-c. U. S. I. R. stamp, cancelled.] [25-c. U. S. I. R. stamp, cancelled.]

No. 14987. Due 26th March, 1861.

(Endorsed:) P. Sauvê

(Endorsement on face of note:)

By consent, and without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29th, 1860.
14 (Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
THEO. GUYOL, *Not. Pub.*

$2,000.00.] NEW ORLEANS, *February 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizen's Bank in this city, two thousand $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[$1.00 U. S. I. R. stamp, cancelled.]

No. 15138. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, & without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

N. Orleans, Feb'y 29th, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$2,000.00] **NEW ORLEANS,** ***February 26th*****, 1858.**

One year after date, I promise to pay to the order of myself, at the Citizen's Bank, in this city, two thousand $_{100}$ dollars, value re-
15 ceived, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[$1.00 U. S. I. R. stamp, cancelled.]

No. 14977. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, & without novation to the mortgage, the payment of this note is postponed to the 26 of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$2,000.00.] **NEW ORLEANS,** ***February 26th*****, 1858.**

One year after date, I promise to pay to the order of myself, at the Citizen's Bank in this city, two thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[$1.00 U. S. I. R. stamp, cancelled.]

No. 14979. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, & without novation to the mortgage, the payment of this note is postponed to the 26th of Feb'y, 1861, interest being paid in advance.

New Orleans, Feb'y 26th, 1860.
(Signed) P. SAUVÉ.

16 Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL.

$3,000.00.] **NEW ORLEANS,** ***February*** **26, 1858.**

One year after date, I promise to pay to the order of myself, at the Citizen's Bank in this city, three thousand $_{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[$1.50 U. S. I. R. stamp, cancelled.]

No. 14989. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$3,000.00.] NEW ORLEANS, *February 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, three thousand $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

17 (Signed) P. SAUVÉ.

No. 14985. Due 26th, March, 1861.

[$1.50 U. S. I. R. stamp, cancelled.]

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, and without novation to this mortgage, the payment of this note is postponed to the 26th of Feb'y, 1861, interest being paid in advance.

New Orleans, Feb'y 29th, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$3,000.00.] NEW ORLEANS, *Febr'y 26th*, 1858.

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, three thousand $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) P. SAUVÉ.

[$1.50 U. S. I. R. stamp, cancelled.]

No. 14992. Due 26th, March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, & without novation to the mortgage, the payment of this note is postponed to the 26th of February, 1861, interest being paid in advance.

New Orleans, Feb'y 29, 1860.
(Signed) P. SAUVÉ.

18 Ne varietur. New Orleans, Feb'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

$5,000.00.] **NEW ORLEANS, *February* 26*th*, 1858.**

One year after date, I promise to pay to the order of myself, at the Citizens' Bank in this city, five thousand $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum, from maturity until paid.

(Signed) P. SAUVÉ.

[$2.50 U. S. I. R. stamp, cancelled.]

No. 14796. Due 26th March, 1861.

(Endorsed:) P. Sauvé.

(Endorsement on face of note:)

By consent, & without novation to the mortgage, the payment of this note is postponed to the of Feb'y, 1861, interest being paid in advance.

New Orleans, Febr'y 26th, 1860.
(Signed) P. SAUVÉ.

Ne varietur. New Orleans, Febr'y 26th, 1858.
(Signed) THEO. GUYOL, *Not. Pub.*

***Act of mortgage annexed to petition marked A.—Filed June* 7*th*, 1866.**

UNITED STATES OF AMERICA,
State of Louisiana:

Be it known that, on this twenty-sixth day of the month of
19 February, in the year of our Lord one thousand eight hundred
and fifty-eight, and of the Independence of the United States of America, the eighty-second, before me, Theodore Guyol, a notary public duly commissioned and sworn for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Pierre Sauvé, of the parish of Jefferson, in this State, who declared that he is justly & truly indebted unto Albin Rochereau, of this city, in the sum of thirty-five thousand dollars (borrowed money,) for which he has given his nineteen promissory notes; three for three thousand dollars each; three for two thousand dollars each; six for fifteen hundred dollars each; six for one thousand dollars each, & one for five thousand dollars, all drawn to the order of and endorsed by himself, dated this day, and made payable one year after date, with interest, from maturity until paid, at the rate of eight per cent. per annum; which notes, after having been paraphed by me, notary, to be identified with this act, were delivered to the said Rochereau here present, who acknowledges the receipt thereof.

And in case it shall become necessary to institute legal proceedings
for the recovery of the amount of the said notes or of any part
20 thereof, the said Sauvé binds himself to pay the fees of the at-
torney at law, who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of said notes at maturity, together with all eventual interest and attorney's fees, the said Sauvé declared that he does, by these presents, mortgage, affect, and specially hypothecate, in favor of said Rochereau, and to enure to the use and benefit of any and all future holder or holders of the said

notes, the said Rochereau being here present and accepting, a sugar-plantation situate in the parish of St. Charles, in this State, on the right bank of the River Mississippi, at about twenty-one miles above this city, and composed of two tracts of land, one measuring fourteen arpents front on the said river, and extending in depth about seventy-five arpents, and the other measuring four arpents & twenty toises front on said river by eighty arpents in depth; together with the sugar-house and other buildings thereon, stock, cattle, mules, farming-utensils and implements of husbandry thereto belonging, and the following-named slaves for life now on and attached to the said plantation, to wit:

	Tom Peterson	aged	32	years.
	Sellick	"	41	"
21	Alfred	aged	42	years.
	Henry Bill	"	34	"
	Big Henry	"	42	"
	Old Azon	"	51	"
	Stephen	"	39	"
	Jo. Mingulot	"	46	"
	Damon	"	49	"
	Edmond	"	44	"
	John Brady	"	41	"
	Anderson	"	42	"
	Peter	"	27	"
	Jos. Holmes	"	49	"
	Adehille	"	42	"
	Jo. Volant	"	60	"
	Old William	"	52	"
	New William	"	30	"
	Gilbert	"	27	"
	Eli	"	44	"
	Hanse	"	28	"
	Louis Mulut	"	36	"
	Louis Fabre	"	36	"
	Old Dick	"	48	"
	Ephraim	"	44	"
	Jack Saville	"	53	"
	George Ross	"	44	"
	George Gray	"	24	"
	Sim	"	26	"
	Andry	"	45	"
	Old Harvey	"	60	"
22	Old Wilson	aged	43	years.
	Little Azore	"	31	"
	Tim Bair	"	39	"
	Little Dick	"	43	"
	Jack	"	43	"
	Charles	"	43	"
	Napoleon	"	19	"
	Luck	"	19	"
	Mack	"	18	"
	Lucy	"	36	"
	Maria	"	42	"
	Polly	"	31	"
	Elizabeth	"	29	"
	Eliza	"	33	"
	Ann Foster	"	48	"

	Charlotte	"	30	"
	Mary Munday	"	53	"
	Old Rose	"	61	"
	Old Flora	"	66	"
	Pricilla	"	29	"
	Caroline	"	19	"
	Peggy	"	20	"
	Cicili	"	17	"
	Lucy	"	17	"
	Fleming	"	17	"
	Lewis	"	27	"
	Ellen Holmes	"	31	"
	Ellen Smith	"	32	"
	Ann George	"	34	"
23	Edy	aged	32	years.
	Mary Ban	"	34	"
	Martha	"	30	"
	Dolly Wilson	"	49	"
	Frances	"	29	"
	Diana	"	34	"
	Alfred	"	13	"
	Valery	"	10	"
	Oscar	"	10	"
	Cornelius	"	11	"
	Stephen	"	7	"
	Robert	"	9	"
	Joe	"	6	"
	Hester	"	12	"
	Old March	"	15	"
	Albert	"	41	"
	Abraham	"	41	"
	Little Joseph	"	35	"
	Washington	"	45	"
	Puss	"	26	"
	Tom Francis	"	35	"
	Benjamin	"	44	"
	Milton	"	36	"
	Cadjo	"	49	"
	Lindor	"	44	"
	Charles Bem	"	34	"
	Tony	"	30	"
	Bob	"	52	"
	Asendor	"	52	"
24	Jo. Munday	aged	52	years.
	Mary Abulat	"	31	"
	Letty	"	36	"
	Lotty	"	54	"
	Artemise	"	53	"
	Mary Rose	"	36	"
	Hortence	"	29	"
	Old Judy	"	59	"
	Kisiah	"	36	"
	Big Harriet	"	38	"
	Little Harriet	"	28	"
	Betsey	"	36	"
	Isac	"	51	"

	Old Romeo	“	61	“
	Bill Boyd	“	42	“
	Jolie	“	48	“
	Cilicourt	“	44	“
	Jinsey	“	49	“
	Annise	“	36	“
	Sophy	“	42	“
	Nancy	“	32	“
	Louisa	“	36	“
	Patsey	“	50	“
	Louisa Joly	“	42	“
	Bela	“	40	“
	Lucy Ann	“	20	“
	Isabella	“	21	“
	Catherine	“	19	“
	Florentine	“	19	“
25	Bushor Little Charlotte	aged	19	years.
	Mary	“	19	“
	Madeline	“	20	“
	Victorine	“	21	“
	Pompon	“	17	“
	Zabella	“	11	“
	Eve	“	10	“
	Munday	“	7	“
	Josephine	“	7	“
	Nancy	“	8	“
	Ely	“	17	“
	Jefferson	“	21	“
	Robert	“	20	“
	John	“	15	“
	Little Jack	“	17	“
	Edmond	“	17	“
	Romeo	“	15	“
	Moses	“	17	“
	Little Henry	“	15	“
	Arthur	“	11	“
	Valcour	“	10	“
	Jim	“	14	“
	Pleasant	“	11	“
	Edward	“	13	“
	Peter	“	14	“
	Gustave	“	6	“
	Barber	“	9	“
	Malvina	“	8	“
	Justine	“	8	“

26 And all further increase of said slaves. He, the said Sauvé, promising not to sell or alienate the said plantation and slaves to the prejudice of this act, and he consents and agrees that any and all legal proceedings for the recovery of the amount of the said notes or any part thereof and for the foreclosure of this mortgage may be instituted & carried to final judgment and execution in any of the district courts of New Orleans, or other court of competent jurisdiction in said city, hereby renouncing the benefit of any and all laws providing that defendants can only be sued or proceeded against before the judge of the parish or district wherein they reside or have their domicil.

According to the annexed certificate of the recorder of mortgages for the said parish of St. Charles, the said plantation and slaves are free from encumbrance, with the exceptions following; to wit:

1°. The mortgage granted by the said Sauvé in favor of C. A.
27 Jacobs, by act in this office, on the 12 June, 1852, to secure the payment of $133,120, now reduced, according to the records of the said recorder, to $55,120, of which $26.00 have been paid, as the said Sauvé hereby declares:

2°. The conventional mortgage granted by the said Sauvé, by act in this office on the 26th October, 1856, in favor of L. F. Genérés, to secure $20,000, on which $10,000 have been paid, as will appear by reference to the annexed certificate of the cashier of the Citizens' Bank of Louisiana.

3°. And the mortgage granted by the said Sauvé in favor of A. M. Nathan, by act in this office on the 24 February, 1857, to secure $30,000, which said mortgage, the said Sauvé binds himself to have cancelled without delay.

And the said mortgagor moreover bind to keep the buildings on the said property constantly insured against loss by fire, to an amount not less than dollars, and to transfer the policies of insurance to the said mortgagee until the full and final payment of the said ; hereby consenting and agreeing that the said mortgagee shall have
28 the right to transfer such policies to any future holder or holders of the said ; and that in case of failure of the said mortgagor to effect such insurance, the holder or holders of the said shall have the right to do so, and the re-imbursement of all sums paid for that purpose, shall be secured by the present mortgage; but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And now, to these presents personally came and appeared, Madame Telzire Fortier, of lawful age, wife of said P. Sauvé, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that approve and ratify the same; and further, that it is her wish and intention to release in favor of the said Rochereau the plantation, &c., herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said Sauvé or otherwise.

29 Whereupon, I, the said notary, did inform the said wife apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage on the property of her said husband—

First, for the restitution of her dowry, and for the re-investment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Secondly, for the restitution and re-investment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected.

Thirdly, for nuptial presents.

Fourthly, for debts by her contracted with her said husband. And fifthly, for the amount of her paraphernal property alienated by her and received by her said husband or otherwise disposed of for the individual interest of her said husband. That, in making her intended renunciation, she would deprive herself irrevocably and forever of all
30 rights of reclamation against the plantation and slaves herein described whether under mortgage, privilege, or otherwise.

And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she, nevertheless, did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others, of any nature or kind whatever to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said husband being now present, aiding and authorizing the said wife in the execution of these presents, she the said wife did again declare that she did and do, hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and
other rights, claims, and privileges in favor of the said Rochereau,
31 binding herself and her heirs at all times to sustain and acknowledge validity of this renunciation.

Done and passed at New Orleans, in my office, the day, month and year aforesaid, in the presence of William G. Latham and Paul Ami, witnesses, who have signed with the appearers and me, notary, after reading the whole.

(Signed)
P. SAUVÉ.
T. SAUVÉ.
ALBIN ROCHEREAU.
W. G. LATHAM.
P. AMI.
THEO. GUYOL, *Not. Pub.*

A true copy.
(Signed) THEO. GUYOL, *Not. Pub.*

Recorded in mortgage-book No. 20, folio 514. Parish of Jefferson, 5th July, 1860.

Certificate annexed to act.—Filed June 7th, 1866.

STATE OF LOUISIANA,
Mortgage Office, Parish of St. Charles:

I, the undersigned recorder of mortgages in and for the parish of St. Charles, aforesaid, do hereby certify that the foregoing act of mortgage
has been, at the date hereof, duly recorded in mortgage-book No.
32 10, folio 359, fol'g entry 1897. And I do further hereby certify that
the mortgage granted by Mr. Pierre Sauvé, in favor of A. M. Nathan, per act of 24th February, 1857, before Theo. Guyol, not. pub., New Orleans, to secure the payment of thirty thousand has been, on the 19th March, inst., duly cancelled and annulled.

And I do further certify that the mortgage granted by the said Pierre Sauvé, on the 12th June, 1852, per act before the said notary, is at the date hereof reduced to the sum of twenty-nine thousand one hundred and twenty dollars.

In witness whereof I have hereunto signed my name and affixed the seal of my office at the parish of St. Charles, on this 20th day of March, A. D. 1858.

[SEAL.] (Signed) EMILE TASTET, *Recorder*

Citation.

State of Louisiana, sixth district court of New Orleans.

MR. EDWARD DUPASSEUR:

You are hereby summoned to comply with the demand con-
33 tained in the petition, of which a copy accompanies this citation,

or deliver your answer to the same, in the office of the clerk of the sixth district court of New Orleans, in ten days after the service hereof.

Witness the Honorable G. Duplantier, judge of the said court the 7th day of June, in the year of our Lord 1866.

(Signed) F. J. LAIZER, *D'y Cle'k.*

Albin Rochereau vs. Edward Dupasseur, No. 18274.

Sheriff's return.—Filed June 18th, 1866.

Received June 7th, 1866, and on the same day served a copy of within citation and accompanying petition personally on E. Dupasseur, def't, herein. Ret. same day.

(Signed) W. WALSH, *D'y Sheriff.*

Plea to the jurisdiction.—Filed June 13th, 1866.

ALBIN ROCHEREAU
vs. } No. 18274.
EDWARD DUPASSEUR.

34 In the honorable the sixth district court of New Orleans.

The defendant now comes into court, by his attorneys, and, for exception to the plaintiff's action, says that said plaintiff cannot have and maintain his said action in this honorable court, for this, to wit: That this respondent having a claim for a large amount of money against P. Sauvé, the payment of which was secured by the vendor's privilege and a special mortgage on the property described in the plaintiff's petition, instituted a suit against said Sauvé in the honorable the United States circuit court for the sixth circuit and eastern district of Louisiana, in which suit judgment was rendered in favor of this respondent for the amount claimed, and recognising the vendor's privilege and special mortgage aforesaid, and ordering said property to be sold to satisfy said judgment; that, in pursuance of said judgment, execution issued and the said property was sold, according to law, by the United States marchal*l*, at which sale this respondent became the purchaser;
35 that, after crediting the amount of the judgment obtained by this respondent, there remained a surplus of about fifteen thousand four hundred dollars, which this respondent paid to the United States marchal*l*, and have by him been paid into the registry of the court, to be distributed by a decree of that court among those who may be entitled thereto; that proceedings are now pending in said circuit court, to which the plaintiff is a party, for the purpose of making a distribution of said fund; that, under the circumstances, this respondent respectfully contends that this honorable court has no jurisdiction in this case, and that the U. S. circuit , being seized of the subject-matter, has *in*clusive jurisdiction to enquire into and determine the question of privilege and mortgage to be executed on the proceeds of the property sold under its judgment: Wherefore respondent respectfully prays that this his plea of jurisdiction of this honorable court be sustained; that he be exempted from *from* answering to the
36 merits, and that the suit be dismissed at plaintiff's cost; and he prays for all such other and further aid, relief, and remedy as the nature of his case may require and the law will permit; and he will ever pray, &c.

(Signed) ROSELIUS & PHILIPS, *Att'ys.*

Order.—Continuance.—Minutes, Friday, 23 *November*, 1866.

ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR. } No. 18274.

By consent of counsel herein, it is ordered that this cause be continued.

Answer.—Filed December 10*th*, 1866.

ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR. } No. 18274.

In the honorable the sixth district court of New Orleans.

The defendant now comes into court, by his attorneys, and, for
37 answer to the plaintiff's petition, says that he denies all and singular the allegations therein contained, so far as they have any tendency to give the said plaintiff any claim on the property of this respondent; that he purchased the property described in the plaintiff's petition at a sale made by the marshal*l* of the United States, in virtue of an execution issued on a judgment rendered by the honorable the circuit court of the United States for the sixth circuit and for the eastern district of Louisiana, in the case of Edward Dupasseur vs. Pierre Sauvé, free of all mortgages and incumbrances, and especially from the alleged mortgage of the plaintiff; that said marshal*l*'s sale was made in virtue of a judgment based on and recognising the existence of a superior privilege and special mortgage to that claimed by said plaintiff; and that the whole of the proceeds of said sale was absorbed to satisfy the judgment in favor of this respondent, except $15,046.05 *dollars*, which are in the said marshal*l*'s hands, subject to the payment, pro tanto, of
38 the plaintiff's mortgage; and, for further answer, this respondent says that the sole foundation of the plaintiff's preten*t*ions is the fact that the vendor's privilege and special mortgage in favor of this respondent, on account of the existence of the civil war and the disturbed condition of the country, could not be re-inscribed within the ten years of the first inscription; because this respondent used every effort and diligence in his power to have said vendor's privilege and special mortgage re-inscribed before the expiration of the said delay, but was prevented from doing so by the fact that the records of the recorder of mortgages of the parish of St. Charles had been carried away; the recorder himself had left the said parish, and it was utterly impossible to have said re-inscription made until a recorder of mortgages was appointed and the records brought back to said parish, when this respondent had said re-inscription forthwith made; that, for further cer-
39 tainty and necessary particulars, he hereunto annexed a copy of said marshal*l*'s deed of said property as part of his answer.

Wherefore this respondent respectfully prays that judgment may be rendered in his favor against the plaintiff, with costs of suit; and he prays for all such other and further aid, relief, and remedy as the nature of his case may require and the law will permit; & he will ever pray.

(Signed) C. ROSELIUS & ALFRED PHILIPS.

Marshall's deed annexed to answer.—Filed 10*th December*, 1866.

EDWARD DUPASSEUR & CO.
vs.
PIERRE SAUVÉ.
No. 3395.

UNITED STATES OF AMERICA,
Eastern District of Louisiana,
City of New Orleans:

Whereas I, Cuthbert Bullitt, marshall of the United States for the eastern district of Louisiana, under and by virtue of a writ of fieri facias issued to me, directed by the honorable the circuit court of 40 the United States for the sixth circuit and eastern district of La., on the 24th of February, 1866, in the suit of Edward Dupasseur & Co. versus Pierre Sauvé, No. 3395 of the docket of said court, did seize and take into my possession the following-described property, viz:

A certain sugar-plantation, situated in the parish of St. Charles, in this State, (known as the Lone Star plantation,) on the right bank of the river Mississippi, at about 21 miles above the city of New Orleans, composed of two tracts of land, one measuring fourteen arpents front on said river, and extending in depth about seventy-five arpents, more or less, bounded on the lower lines by the property of Massicot, lately belonging to E. Reine; and the other tract measuring four arpents and twenty toises, more or less, front on said river, by eighty arpents in depth, adjoining, on the upper side, the plantation of George Rixner. and on the lower side the tract first-mentioned, together with the buildings, mules, implements of husbandry, and house-furniture of said plantation, to wit: two dwelling-houses, two kitchens, four pigion-41 houses, one hen-roost; one sugar-house, with machinery and engines; a cane-shade and purgerie, 26 negro-cabins, 2 stables, 1 corn-house; one blacksmith-shop, with tools; forty-one mules, forty-two mule-plows, ten four-mule plows, six six-mules plows, one lot of old plows, three three-mule carts, one one-mule cart, one lot of old carts, one lot of wheels, nine harrows, one lot of carpenters' tools, one corn-mill, one corn-shelter, one jack, one scale, three grass-knives, two armoirs, one bedstead, two flukes, one lot of old iron, one draining-machine, one lot of staves for hogsheads. When, after all the previous and legal requisites of law had been fulfilled and complied with, I advertised for sale the above-described property, according to law, by giving notice of sale in the New Orleans Times, in English, a newspaper printed and published in New Orleans, and in the New Orleans Bee, in French, a newspaper also published in the same city; and the said sale was also advertised, in French and English, in the L'avant Courier, a newspaper printed and published in the parish of St. Charles, La., which adver-42 tisements in the various papers above recited, have been made according to law as will be shown by the return of the said writ announcing the sale of the aforementioned property to take place at the doore of the court-house of the parish of St. Charles, La., on Saturday, the fifth day of May, 1866, at 12 o'clock m., when and where, after having further complied with all the previous and legal requisites of law in such cases made & provided, and after the aforementioned & described property had been duly appraised, I did expose the same at public sale, according to law, at the door of the said court-house of the said parish of St. Charles, La., on the said Saturday, the said fifth day of May, A. D. 1866, at 12 o'clock m., having first read to the by-standers the certificate of the recorder of mortgages for the parish of St. Charles, La., whereby it appears that the following are the only mortgages standing recorded against the said property in the name of said deft, viz:

1st. By act passed on the 12th day of June, 1852, before Theodore Guyol, a notary public in the city of New Orleans, the said Pierre
43 Sauvé consented, and granted a mortgage in favor of Charles Anderson Jacobs, to secure the punctual payment of the following promissory notes, viz: Five promissory notes, drawn to the order of and endorsed by the said Pierre Sauvé, dated on the 4th day of June, 1852, and made payable at the Bank of Louisiana—four for the sum of twenty-six thousand dollars each, in one, two, three, and four years, respectively, after date, and one for the sum of twenty-nine thousand one hundred & twenty dollars, in five years after date; all bearing interest, after maturity, at the rate of seven per cent per annum, till final payment. Of those above-described notes four (the firstly described) have been paid, and the above mortgage cancelled to the extent and amount of the said four notes. Said mortgage was re-inscribed on the 15th day of May, 1865; and, from a note in the mortgage-book opposite the re-inscription of said mortgage, it appears that three distinct efforts were made in order to obtain a re-inscription of the said mortgage,
44 one prior to the 12th November, 1862; two a short time thereafter, before the same could be effected.

2nd. By an act passed on the 26th day of February, 1858, before the said notary, Mr. Pierre Sauvé, granted a mortgage in favor of Albin Rochereau, of the city of New Orleans, to secure the punctual payment of the following-described notes, viz: nineteen promissory notes—three for three thousand dollars each; three for two thousand dollars each; six for fifteen hundred dollars each; six for one thousand dollars each; & one for five thousand dollars—all drawn by the said Pierre Sauvé to his own order and by him endorsed, dated the 26th February, 1858, and made payable, one year after date, with interest, from maturity till paid, at the rate of eight per cent. per annum.

3rd. By an act before the said notary, Theo. Guyol, passed on the 3rd day of April, 1860, the said Pierre Sauvé granted mortgage in favor of Louis F. Générés, of the city of New Orleans, to secure the payment of the sum of twenty thousand dollars, amount of eight promissory notes, drawn by the said Pierre Sauvé to his own order and by him en-
45 dorsed, dated 3rd April, 1860—one for six thousand dollars; two for twenty-five hundred dollars; one for twenty-four hundred and thirty-two dollars; one for twenty-two hundred dollars; one for fifteen hundred and sixty-eight dollars; one for fifteen hundred dollars; and one for thirteen hundred dollars—all bearing interest, from maturity till paid, at eight per cent per annum, and payable at the Bank of Louisiana, in one year after date.

4th. By an act passed on the 15th day of April, 1861, before the said Theo. Guyol, notary, Mr. Pierre Sauvé granted a mortgage, in favor of Mess'rs J. W. Burbridge & Co., of the city of New Orleans, a commercial firm in said city, composed of J. W. Burbridge and Thomas D. Miller, to the extent of the sum of thirty thousand dollars to secure the payment of all advances in cash & supplies, and to secure the said firm against all loss, damage, &c., which they may suffer or incur by reason of their acceptances, &c., and also to secure to them the full and final payment of any and all sum & sums of money which may be due, and
46 owing by the said Pierre Sauvé to the said J. W. Burbridge & Co., together with all eventual interest & attorney's fees.

5th. From a judgment rendered on the 17th November, 1865, & signed on the 23rd day same month and year, by A. Cazabat, judge of the second judicial dist. court of Louisiana, in and for the parish of Jefferson, in the case of Gaston Buslé vs. Pierre Sauvé, No. 2606 of the docket of said court, there results a judicial mortgage against the said Pierre Sauvé and in favor of the said Gaston Buslé, for the sum of five thousand dollars, am't of a promissory note drawn by the said P. Sauvé to his own order and by himself endorsed, dated New Orleans, March 29th, 1860, payable one year after date, with interest, at the rate of eight per cent. per annum, from maturity till paid, and paraphed Ne var'etur by Theo. Guyol, notary, in New Orleans; also for the sum of four dollars, costs of copy of the act of mortgage, and five per cent. attorney's fees, on the whole amount of said note and interest, & all costs of suit.

6th. From a judgment rendered by the sixth district court of New Orleans on the 15th of March, 1866, in the case of Albin Rochereau vs. Pierre Sauvé, No. 18001 of the docket of said court, there results a judicial mortgage against the said Sauvé and in favor of 47 Albin Rochereau, for the sum of thirty-five thousand dollars, with eight per cent. per annum interest thereon, from the 26th February, 1861, till final payment; five per cent. on said sum and interest for attorney's fees, five dollars costs of notarial act & costs of suit, with special mortgage, to take effect from the 28th February, 1858, on the property described in plaintiff's petition.

All the above recited mortgages, except the fourthly described, effect the following described plantation, viz: A certain sugar-plantation, situated in the parish of St. Charles, on the right bank of the Mississippi River, about twenty-one miles above the city of New Orleans, and composed of two tracts of land, one having fourteen arpents front on said river, and extending, in depth, about seventy-five arpents, and the other four arpents and twenty toises front on said river, by eighty arpents in depth, bounded above by the plantation of F. E. Wilson & Co., and below by that of Ezra Davis, together with the buildings & improvements, stock, cattle, horses, mules, &c., on said plantation, and a number of slaves, whose names & ages are fully de- 48 scribed in each act of mortgage above-mentioned, then attached to said plantation.

The fourthly described mortgage effects not only the above-described plantation, &c., but also a certain tract of land belonging to the said Sauvé, situate in the parish of Jefferson, in this State, on the left bank of the Mississippi River, more fully described in said act of mortgage.

In faith whereof I have hereunto signed my name and affixed the seal of my office the 31st day of March, 1866.

(Signed) F. T. BANDONIN, *Recorder.*

Approved May 5th, 1866.

(Signed) F. T. BANDONIN, *Recorder.*

When and where Edward Dupasseur, esq., a subject of the French Empire and a resident of the city of New Orleans, being the highest and last bidder on the hereinbefore-described property, buildings, stock, &c., the same was adjudicated to him for the price and sum of 49 sixty-four thousand one hundred and fifty-one dollars cash: out of which amount of adjudication the said purchaser has retained in his hands the sum of forty-nine thousand one hundred and four & $\frac{05}{100}$ dollars to satisfy his mortgage-claim on said property, and the balance, fifteen thousand forty-six $\frac{95}{100}$ dollars, I acknowledge to have received, in lawful money of the United States of America, from the said Edward Dupasseur, purchaser as aforesaid, and which amount of fifteen thousand forty-six $\frac{05}{100}$ I retained in my hands for the purposes of paying all clerks, &c., marshal*l*' costs & expences accrued and due under said writ, & all taxes and any other claim or claims the judge may decree to be just & correct.

Now, therefore, know all men by these presents, that I, the United States marshal*l* aforesaid, in consideration of the within adjudication and by virtue of the laws in such cases made and provided, do hereby sell, transfer, assign, and set over unto the said Edward Dupasseur, purchaser as aforesaid, his heirs, administrators, executors, and assigns, all and singular the property, moveable & immov'able, hereinbefore described, together with all the buildings and improvements,
50 stock, &c., &c., thereon, rights, ways, & privileges, hereditaments, and appurtenances to the same belonging and in any wise appertaining.

To have and to hold the afore-described property, unto the said Edward Dupasseur, the aforenamed purchaser, his heirs and assigns as aforesaid, to them, and their proper use and behoof forever. In testimony whereof I grant these presents under my signature, as U. S. marshal*l* aforesaid, in the said city of New Orleans, on this fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninetieth.

(Signed) CUTHBERT BULLITT,
U. S. Marshall.

[$64.00 int. rev. stamps, affixed & cancelled.]

Executed in presence of—
(Signed) A. BANDONIN.
A. BOISBLANC.

CLERK'S OFFICE.

A true copy of the original deed of sale. New Orleans, May 21st, 1866.
(Signed) CHA'S CLAIBORNE, *Clerk*.
By F. B. VINOT, *D'y Clerk*.

51 Circuit court of the U. S., 5th circuit and dist. of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original of record in this office, in book of sales No. 2, pages 81 to 85, inclusive.

Witness my hand and seal of said court at New Orleans, this 6th day of December, A. D. 1866.
(Signed) CHA'S CLAIBORNE,
By F. B. VINOT, *D'y Clerk*.

Interrogatories to witnesses for pl'ff.—Filed November 5th, 1867.

Sixth district court of New Orleans.

ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR.
} No. 18274.

Interrogatories to be propounded to and answered under oath by the following-named persons, witnesses in behalf of pl'ff, viz: Célicourt St. Martin, Noel St. Martin, and T. T. Bandonin, all residing in the parish of St. Charles.

Int. 1. Do you know the parties to this suit?

Int. 2. What is the parish of your domicil, and how long has it been so?

Int. 3. Did you or did you not know P. J. Kramer, late recorder 52 of the parish of St. Charles?

Int. 4. Did or did not the said Kramer ever exercise the functions of recorder in & for the parish of St. Charles?

Int. 5. If you say that he did perform the functions of recorder of the said parish, state when he took possession of the said office and commenced the exercise of the said functions, and how long he continued to do so. Be as particular as possible as to dates.

Int. 6. Who was the successor of the said Kramer in the said office, and when did the said successor enter into possession of the said office?

Int. 7. Since the appointment of the said Kramer, and his entry into possession of the said office as recorder aforesaid, has or has not the said office ever been closed, and the business thereof been suspended for want of an officer exercising the functions of recorder, or for any other cause?

Int. 8. State any other fact within your personal knowledge that may be pertinent to the matters herein enquired of.

(Signed) JOHNSON & DENIS,
Att'ys for Pl'ff.

53 *Notice to cross-interrogatories.*

State of Louisiana, sixth district court of New Orleans.

ROCHEREAU vs. DUPASSEUR. } No. 18274.

To ROSELIUS & PHILIPS:

Whereas the in the above-entitled cause this day filed in the office of the clerk of this court certain interrogatories, a copy of which accompanies this notice, propounded to Celicourt St. Martin, Noel St. Martin, & T. F. Bondoin, in the parish of St. Charles, witnesses for said plaintiff, residing at , whose answers to the said interrogatories are to be taken under commission for that purpose to be issued, and to be read in evidence on the trial of said cause.

You are notified to propound such cross-interrogatories as you may deem necessary, and leave the same at this office within three days from the service thereof.

Clerk's office, sixth district court, this 5th day of Nov. 1867.

(Signed) W'M WOELPER, *Clerk.*

Sheriff's return.—Filed Nov. 8th, 1867.

54 Received November 5th, 1867, and on the same day, month, and year, served copy of the within notice and interrogatories on Messrs. Roselius & Philips, through A. Philips, esq., personally. Returned same day.

(Signed) F. B. HERNANDEZ,
D'y-Sheriff.

Sh'ff's fees, $1.00

Cross-interrogatories.—Filed November 7th, 1867.

Sixth district court of New Orleans.

ALBIN ROCHEREAU
vs. } 18274.
EDWARD DUPASSEUR.

Defendant, reserving all legal objections, propounds the following cross-interrogatories:

I. Who was the recorder of the parish of St. Charles in 1861 & 1862? Down to what time did said recorder continue to perform his functions? Did he continue to perform his functions after the capture of the city of New Orleans, in May, 1862, by the Federal Army & Navy? If yea, down to what time and when did he cease to act? Were any acts registered or recorded by him subsequent to May, 1862? If yea, how many, and when? Did he have access to his records after said time? Why not? State the general condition of affairs at the court-house & environs 55 at said time. How many recorders for the parish of St. Charles have been appointed or elected since May, 1862? What are their names? When did they commence & when cease to act?

II. Interrogatories to be propounded to Celicourt St. Martin, one of the above-named witnesses, only.

II. Where you not recorder of the parish of St. Charles in 1861 & 1862? Was or not application made to you in 1862 by Phillippe Bidault, as the representative of Edward Dupasseur, for the re-inscription in said office of an act of sale of a certain plantation & slaves, situate in said parish, dated 12 June, 1862, and purporting to be a sale by Charles Anderson Jacobs to Pierre Sauvé? If yea, was or not said act re-inscribed or recorded? Why was the same not re-inscribed or recorded?

III. Did or not said Philippe Bidault again present himself to you, in March, 1863, with said act of sale of said plantation & slaves above-mentioned, for re-inscription or recordation? If yea, was or not the same re-inscribed or recorded? Why not?

IV. Did or not Mr. A. F. Numa Bion, as the agent or representative of Edward Dupasseur, present himself to you in April, 1863, 56 with a copy of said above-mentioned act of sale for a re-inscription or recordation? If yea, was or not the same re-inscribed or recorded? Why not? Was any subsequent effort made to re-inscribe or record said act of sale? If yea, when & by whom? Was the same then re-inscribed or recorded or not; and if not, why? When was the same re-inscribed or recorded, & by whom? Did you or not make any memorandum or give a certificate to said parties making said efforts to re-inscribe or record said act of sale? If yea, what became of the same? If the same are in your possession, you will please annex them to your answer to this interrogatory? If, for any reason, you cannot annex the originals, you will please annex copies of the same to your answer.

To all the witnesses.

V. You will please state any fact or circumstance within your knowledge which may be of advantage to the defendant.

(Signed) C. ROSELIUS & ALFRED PHILIPS,
Att'ys for Def't.

Order: Continuance.—Minutes, Friday, 29th November, 1867.

57 ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR. } No. 18274.

It is ordered by the court that this case, fixed this day at the regular calling of cases, be continued with preference.

Evidence.—Filed 13*th December*, 1867.

A. ROCHEREAU
vs.
EDW'D DUPASSEUR. } No. 18274. In sixth district court.

On trial this day—

Counsel for plaintiff offers in evidence record of suit No. 18001 in this court.

Also the 19 notes sued upon in suit No. 18001 in this court.

Also the copy of act of mortgage, Sauvé to Rochereau, of 26 Feb., 1858, & the certificate of the registry of the same act in the parish of St. Charles, on 20 March, 1858. (See doc. A.)

Def't offers in evidence the record in case No. 3395 in circuit court of U. S. up to & inclusive of the sale by the marshal; also the marshal's deed to A. Dupasseur. (See Doc. B.) Also, certificate of mortgages to be produced.

58 **CONTORM BIDAUD** sworn for def't:

I employed by Dupasseur since 11 years; was in his employ in begin'ing of 1862 when the Federal Government took possession in May, 1862. It was impossible for a person from May, 1862, to Dec., 1862, to go out of the city of N. O. to parish St. Charles without a special military permit. I went often in behalf of def't to the headquarters of Gen'l Butler for the purpose of obtaining a permit to go to St. Charles in order to re-inscribe the mortgage in this case of def't on Sauvé's plantation. These efforts were made from May to Dec. I went at least 5 or 6 times with Mr. Roselius to Gen'l Butler's headquarters for that purpose. I went during that time nearly every day to Mr. Roselius' office, nearly every day for the same object. Def't went there also. It is to my knowledge that Mr. Dupasseur himself made every effort to obtain that permit. He went with me to headquarters; and it was only in Nov'r or Dec., 1862, that the permit was
obtained. My nephew, Philip Bidaud, was sent specially, the
59 day or next day after the permit was obtained, to St. Charles to
re-inscribe the mortgage.

Cross-examined:

Have you not been in partnership with def't?

I had only an interest in the profits. I had no interest in this Suavé debt.

PHILIPPE BIDAUD, sworn for def't, says:

I went to parish St. Charles sent by def't, in Dec., 1862, after a military permit was obtained from Gen'l Butler, through Mr. Roselius. I arrived the next day in parish St. Charles at the court-house for the purpose of having the act of mortgage, favor def't on Suavé plantation, reinscribed in the mortgage-office in parish St. Charles. When I arrived at the court-house there was no judge, no court, no sheriff, & no recorder. I found a gentleman named Celicourt St. Martin, who was formerly, during confederate times, the recorder mortgages for the parish, & he told me that he had no power to act & could not comply with my request because the court-house was locked up; the sheriff had the key, & he was out of the parish. There were no records & he had no power to act.

And he gave me a written certificate signed by him to that effect.
60 (Is shown a paper, says:)

This is the copy of the certificate he gave me. The original is pasted in the record-book in parish St. Charles, pasted there by Mr. Crammer himself. I made a 2nd effort the next year, in March, 1863. The result was the same. Mr. St. Martin stated the court-house was shut up, & he gave me a certificate to the same effect. I made the third attempt the month following, in April, 1863. The result was a failure the same as the other attempts, & he gave me a certificate also. I cannot recollect the time, but I succeeded when I went there the fourth time, & that was made under the Government established by Gen'l Banks. The act was recorded by Mr. Crammer, who was appointed by Governor Hahn.

C. **Roselius**, esq., states:

A very short time after the Federal authority was established in this city, I made repeated efforts in behalf of def't & his clerk, at headquarters, to get a permit to go to St. Charles to get this mortgage re-inscribed, which applications were refused by Gen'l Butler up to Dec., when I obtained the permit under which the previous witness went, I presume.

A person could not go then out of the city without a special per-
61 mit. I had to obtain a permit to go two miles above Carrollton
to a place I had there.

Cross-examined:

I know that I applied for the permit for def't before the expiration of the ten years. It was when the gen'l had that room in the custom-house, which Mr. Torry occupied.

Deft's counsel offer the copy of certificate referred to by witness Philippe Bideaud. (See Doc. "C," also Certificate "D," now filed.)

Rebutting evidence by pl'ff.

Pl'ff offers in evidence Document "E" now filed, also deposition of Bandoin & C. St. Martin taken under commission. (See Doc. "F.")

Record No. 18001, *offered in evidence by counsel for plaintiff.—Filed Febr'y 24th*, 1866.

Sixth district court of New Orleans.

Albin Rochereau
vs. } No. 18001.
Pierre Sauvé.

To the hon. the sixth district court of the city of New Orleans:

The petition of Albin Rochereau, residing in the city of New
62 Orleans, State of Louisiana, respectfully represents that Pierre

Sauvé, also residing in the city of New Orleans, State aforesaid, s justly and truly indebted unto petitioner in the full sum of thirty-five thousand dollars, ($35,000,) with interest thereon, (at the rate of) 8 % eight per cent. per annum, from the 26th day of February, 1861, until final payment; and in the further amount of (5 %,) five per cent., as attorney's fees on said sum of thirty-five thousand dollars and interest as aforesaid; and in the further sum of ($5,) five dollars, costs of copy of notarial act, and costs of suit, for this, to wit: That petitioner is the holder and owner in good faith and for value of (19) nineteen certain promissory —(3) three for the sum of three thousand dollars each, ($3,000;) (3) three for the sum of ($2,000,) two thousand dollars each; (6) six for the sum of ($1,500) fifteen hundred dollars each; and one for the sum of ($5,000,) five thousand dollars; that all said (19) nineteen are dated New Orleans, 26 February 1858, and were made, subscribed, and delivered by said Pierrie Sauvé, and are made payable one year after date, with interest from maturity until paid, at the rate of (8 %) eight per cent. per annum and are all made to the order of, and are indorsed by, said Pierre Sauvé, and are paraphed by Theodore Guyol, a notary
63 public in and for the parish of Orleans, State of Louisiana, to
identify said notes with an authentic act of mortgage consented to and granted by said Pierre Sauvé in favor of your petitioner Albin Rochereau, and to enure to the use and benefit of any and all future holder or holders of said notes, and passed before said Theodore Guyol, notary public, on the 26th day of February, 1858; a duly certified copy of which act of mortgage is hereto annexed for reference and greater certainty, and made part of this petition and marked A.

Petitioner further represents that in said act of the 26th February, 1858, the said Pierre Sauvé, stipulated and bound himself to pay, in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes or of any part therof, the fees of the attorney at law, who may be employed for that purpose, which fees are by said act fixed at (5 %) five per cent. on the amount sued for, and that in order to secure the punctual payment of said nineteen (19) promissory notes at maturity, together with all eventual interest and attorney's fees aforesaid, the said Pierre Sauvé, by said authentic act of the 26th February, 1858, passed before said notary public, specially mortgaged, affected, and hypothecated in favor of petitioner, (to said act a party present,
64 and excepting said mortgage,) said mortgage to enure to the use
and benefit of any and all future holder or holders of the said notes, the following-described property, to wit: A sugar plantation situate in the parish of St. Charles, in this State, on the right bank of the river Mississippi, at about (21) twenty-one miles above the city of New Orleans, and composed of two tracts of land, one measuring (14) fourteen arpents on the said river, and extending in depth about (75) seventy-five arpents; and the other measuring (4) four arpents and (20) twenty toises front on said river, by (80) eighty arpents in depth; together with the sugar-house *house* and other buildings thereon, stock, cattle, mules, farming-utensils, and implements of husbandry thereto belonging, all of which will more fully be seen by reference to said act of mortgage (containing the clause of non-alienation,) a copy whereof is hereunto annexed for greater certainty, and is made part of this petition.

Petitioner further represents that, at the request and for the accomidation of said Pierre Sauvé, the said notes being yet due and not paid, were, on the 29th February, 1860, extended for payment until the 26th February, 1861, without novation of said mortgage, interest on
65 said notes having been paid in advance up to said date.

Petitioner alleges amicable demand by him made of said Sauvé, who has neglected and still neglects to pay said notes which are yet due to petitioner.

Wherefore petitioner prays that said Pierre Sauvé, residing in the city of New Orleans, be cited to appear before this honorable court to answer this petition, and that after due proceedings had, he be condemned by a judgment of this honorable court to pay petitioner the full sum of ($35,000.00,) thirty-five thousand dollars, with interest thereon at the rate of (8 %) eight per cent. per annum from the 26th February, 1861, until final payment, and (5 %) five per cent. on said sum of $35,000, and interest as aforesaid, as attorney's fees, and the further sum of ($5.00) five dollars, cost of copy of notarial act, and costs of suit, and that to secure the payment of said sum of $35,000.00 and interest and attorney's fees at the rates aforesaid, a special mortgage be decreed and recognized in favor of petitioner to take effect from the 26th February, 1858, on the above-described plantation and land, and that said property be ordered to be seized and sold for cash, according to law, to pay petitioner the said sum of $35,000, with interest & attorney's fees and costs as aforesaid, and for all general & equitable relief.

66 And as in duty bound, &c.

(Signed) ALBIN ROCHEREAU.

À l'honorable la sixième cour de district de la Nouvelle Orléans.

La pétition d'Albin Rochereau demeurant à la Nouvelle Orléans, expose respectueusement:

Que Pierre Sauvé, domicilié à la Nouvelle Orléans, est justement red à notre pétitionnaire de la somme de trente-cinq mille piastres avec intérêt sur la dite somme à raison de huit pour cent. par an à partir du 26 fébrier 1861, jusqu'à paiement final; et de plus de cinq pour cent. sur le montant de la sus-dite dette à titre de frais d'avocat, et de cinq piastres frais, d'actes et de protêt, pour ce qui suit, savior:

Que notre pétitionnaire est porteur de dix neuf billets à ordre, souscrits par le dit Sauvé, sous la date du 26 Fébrier, 1858, tous payable à son propre ordre et par lui endorsés à un an de leur date, dont trois pour la somme de trois mille piastres chaque; six pour la somme de quinze cents piastres chaque; trois pour la somme de deux milles piastres chaque; six pour la somme de mille piastres chaque, et un billet de la somme de cinq mille piastres, tous portant intérêt à raison de huit
67 pour cent, par an, à partir de l'échéance, et paraphis ne varietur
par Theodore Guyol, notaire dans et pour la paroisse et ville de la Nouvelle Orléans, afin de les identifier avec un acte passé devant le dit Guyol, notaire, en date du 26 fébrier 1858, dont copie, dument certifié, est ci-annexée comme partie de cette pétition, et marquée A.

Votre pétitionnaire expose de plus qu'il a été convenu par le dit Sauvé dans le dit acte que, dans le cas où il deviendrait nécessaire de poursuivre judiciairement les dits billets, les honoraires de l'avocat employé à ces fins, au tourx de cinq pour cent. sur le montant réclamé, serait payés par lui le dit Suavé; et qu'afin de g'arantier le paiement des dits dix-neufs billets à leur écheance, avec les intérêts qu'ils portent, et les frais d'avocat, comme il est dit ci-dessus, le dit Suavé à consenti une hypothèque spéciale en faveur de votre pétitionnaire et de tous porteurs des dits billets, sur la propriété suivante, savior:

Une habitation sucrière située dans la paroisse St. Charles, sur la rive droite du Mississippi, à environ vingt-et-un milles audessus de la ville de la Nouvelle , et composée de deux portions de terre, une mesu-

rant quatorze de face au dit fleuve, sur une profondeur de soixante-quinze arpens; et l'autre mesurant quatre arpens et vingt toises
68 de face au dit fleuve, sur quatre-vingts arpens de profondeur, ensemble avec la sucrière et autres dépandances, animaux, instruments avatoires, et autres objects y attachés, comme le tout se trouve plus amplements décrit dans le dit acte hypothécaire, qui contient la clause de non aliénande; copie du quel acte est ci-annexée comme partie de cette pétition.

Pétitionnaire expose de plus qu'à la demande du dit Sauvé, une prolongation de terme, pour le paiement des dits billets qui n'ont pas été payés à échéance, a été accordée jusqu'au 26 Février 1861, sans novation ni des billets ni des droites hypothécaires y attachés, les intérêts sur i-ceux ayant été payés d'avance jusqu'à la dite date du 26 février, 1861.

Il allegue de plus que le dit Sauvé refuse et neglige de payer les dits billets nonobstant demande de paiement à l'amicable souvent réitérée.

C'est pourquoi votre pétitionnaire demande que le dit Pierre Sauvé, qui demeure à la Nouvelle Orleans, soit cité, et, qu'après les procédures legales, il soit condamné à payer à votre petitionnaire la somme de trente-cinq mille piastres, avec intérêts sur la dite somme, à raison de huit pour cent. l'an, depuis le 26 février, 1861, jusqu 'à parfait paiement, et cinq pour cent. sur la somme totale en capital et intérêt sur-ré-
69 clamée pour honoraires d'avocat, cinq piastres frais d'acte, et les frais de cette affaire; il prie aussi qu'il soit décrêté que le dit acte hypothécaire soit reconnu comme bon et valable, en faveur de votre pétitionnaire, à dater du 26 février 1858, sur l'habitation ci-dessus décrite, et que les dites propriétés soient saisies et vendues au comptant, conformément à la loi, afin de payer à votre pétitionnaire la dite somme de trente-cinq mille piastres, avec intérêts, frais d'avocat, et frais de cour, et pour tout autre secour.

(Signé) ALBIN ROCHEREAU.

Act of mortgage, marked "A."

Annexed to petition, filed February the 24th, 1866. (See page "24.")

Citation.

State of Louisiana, sixth district court of New Orleans.

Mr. PIERRE SAUVÉ, *New Orleans:*

You are hereby summoned to comply with *with* the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the 6th district court of New Orleans, in ten days after the service hereof.

70 Witness the Honorable Guy Duplantier, judge of the said court, the 24th day of February, in the year of our Lord 1866.

(Signed) LOUIS J. LEFEBRE, *D'y-Clerk.*

ALBIN ROCHEREAU
vs.
PIERRE SAUVÉ.
} No. 18001.

État de la Louisiane, 6me cour de district de la Nouvelle Orléans.

Mr. PIERRE SAUVÉ, *Nouvelle Orléans:*

Vous êtes sommé de satisfaire à la demande contenue dans la petition, dont une copie est ci-annexée, ou de remettre votre réponse à i-celle au

Bureau du Greffier de la 6me cour de district de la Nouvelle dix jours après sa notification.

Temoin, l'Honorable Guy Duplantier, judge de la dite cour, le 24th jour de février de l'année de notre Seigneur 1866.

[SEAL] (Signed) LOUIS J. LEFEBRE.

Sheriff's return.—Filed February 24th, 1866.

Received, February 24th, 1866; and, on the same day, month, and year served copy of the within citation and accompanying petition on Pierre Sauvé, defendant herein, in person.

Returned same day.

71 (Signed) JNO. MOUSSIEUR,
D'y-Sheriff.

Default.—"Minutes," Wednesday, 7th of March.

ALBIN ROCHEREAU
vs.
PIERRE SAUVÉ.
No. 18001.

On motion of Charles A. Johnson, esq., for the plaintiff on this cause, and on showing to the court that the defendant herein has failed to answer, though duly cited—

It is ordered, that judgment by default be entered against him.

Judgment.

ALBIN ROCHEREAU
vs.
PIERRE SAUVÉ.
No. 18001.

Judgment entered Ma'ch 10th, 1866.

This cause came on to-day, on motion of Denis, for the pl'ff therein, to confirm the judgment by default, & after hearing pleadings and evidence, the court, considering that the law & evidence are in pl'ff's favor, it is adjudged & decreed that the judgment by default, herein 72 entered on the 7th inst., be now confirmed & made final; that the pl'ff, Albin Rochereau, have judgment against & do recover of the def't, Pierre Sauvé, the sum of thirty-five thousand dollars, with eight per cent. per annum interest thereon from the 26th February, 1861, until final payment; five per cent. on said sum of $35,000 & interest, for attorney's fees, five dollars cost of notarial act & costs of suit, with special mortgage, to take effect from the 28th February, 1858, on the property (plantation & land) set forth in pl'ff's petition and act of mortgage, marked A, on file in this case.

Judgment signed March 15th, 1866.

(Signed) GUY DUPLANTIER, *Judge.*

Sheriff's return on copy of judgment.—Filed March 29th, 1866.

Received, March 16th, 1866; &, on the 27th of the same month & year, served copy of the within certificate of judgment, personally, on Pierre Sauvé, the defendant herein.

Returned same day.

(Signed) G. TOURNADE,
D'y Sheriff.

Sh'ff's fees, $ .50.

73 Nineteen notes offered in evidence by counsel for pl'ff. (See pages 7 to 24.)

Copy act of mortgage, Sauvé to Rochereau, of 26th February, 1858, and the certificate of registry of same. Act offered in evidence by counsel for pl'ff. (See pages 24 to 39.)

Original marshall's deed, marked B, offered in evidence by defendant.—Filed December 13*th*, 1867.

Suit No. 3395 in the U. S. circuit court.

EDWARD DUPASSEUR & CO.
vs.
PIERRE SAUVÉ.

THE UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Whereas I, Cuthbert Bullitt, marshall of the United States for the eastern district of Louisiana, under and by virtue of a writ of fieri facias, isued and to me directed by the honorable the circuit court of the United States, for the sixth circuit and eastern district of La., on the 24th of February, 1866, in the suit of Edward Dupasseur & Co. versus Pierre Sauvé, (No. 3395 of the docket of the said court,) did seize
74 and take into my possession the following-described property, viz:

A certain sugar-plantation, situated in the parish of St. Charles, in this State, known as the Lone Star plantation, on the right bank of the river Mississippi, at about 21 miles above the city of New Orleans, composed of two tracts of land, one measuring 14 arpents front on said river, and extending in depth about seventy-five arpents, more or less, bounded on the lower line by property of Massicot, lately belonging to E. Reine; and the other tract measuring four arpents and twenty toises, more or less, front on said river by eighty arpents in depth, adjoining on the upper side the plantation of George Rixner, and on the lower side the tract first mentioned, together with the buildings, mules, implements of husbandry, and house furniture of said plantation, to wit: two dwelling-houses, two kitchens, two pigeon-houses, one hen-roost; one sugar-house, with machinery and engine; a cane-shade and purgerie, twenty-six negroe cabins, two stables, one corn-house, one blacksmith shop with tools, twenty-one mules, four two-mule plows, ten four-mule plows, six six-mule plows, one lot of old plows, three three-mule carts, one one-mule cart, one lot of old carts, one lot of wheels,
75 nine harrows, one lot of carpenters' tools, one corn-mill, one cornshelter, one jack, one scales, three grass-knives, two armoirs, one bedstead, two flukes, one lot of old iron, one draining-machine, one lot of staves for hogsheads.

When, after all the previous and legal requisites of law had been fulfilled and complied with, I advertised for sale the above-described property, according to law, by giving notices of sale in the New Orleans Times, in English, a newspaperprinted and published in New Orleans; and in the New Orleans Bee, in French, a newspaper also published in the same city; and the said sale was also advertised, in French and English, in the L'avant Courier, a newspaper published & printed in the parish of St. Charles, La., which advertisements in the various papers above recited have been made according to law, as will be shown by the return of the said writ announcing the sale of the aforementioned property to take place at the door of the court-house of the parish of St. Charles, La., on Saturday, the fifth day of May, 1866, at 12 o'clock m.

When and where, after having further complied with all the previous and legal requisites of law in such cases made and provided, and after the aforementioned & described property had been duly appraised, I
76 did expose the same at public sale, according to law, at the door of the said court-house of the said parish of St. Charles, La., on the said Saturday, the said fifth day of May, A. D. 1866, at 12 o'clock m., having first read to the by-standers the certificate of the recorder of mortgages for the parish of St. Charles, La., whereby it appears that the following are the only mortgages standing recorded against the said property in the name of said def't, viz:

1°. By an act passed on the 12th day of June, 1852, before Theodore Guyol, a notary public in the city of New Orleans, the said Pierre Sauvé consented and granted a mortgage in favor of Charles Anderson Jacobs to secure the punctual payment of the following promissory notes, viz, five promissory notes, drawn to the order of and endorsed by the said Pierre Sauvé, dated on the 4th day of June, 1852, and made payable at the Bank of Louisiana—four for the sum of twenty-six thousand dollars each, in one, two, three, and four years, respectively, after date; and one for the sum of twenty-nine thousand one hundred & twenty dollars, in five years after date, all bearing interest after maturity at the rate of seven per cent. per annum till final payment.

Of those above-described notes four, (the firstly described,)
77 have been paid and the above mortgage cancelled to the extent and amount of the said four notes. Said mortgage was re-inscribed on the 15th day of May, 1865, and from a note in the mortgage-book opposite the re-inscription of said mortgage, it appears that those distinct efforts were made in order to obtain a re-inscription of the said mortgage, one prior to the 12th Nov., 1862, and two a short time thereafter, before the same could be affected.

2°. By an act passed on the 26th day of February, 1858, before the said notary, Mr. Pierre Sauvé granted a mortgage in favor of Albin Rochereau, of the city of New Orleans, to secure the punctual payment of the following-described notes, viz: nineteen promissory notes—three for three thousand dollars each; three for two thousand dollars each; six for fifteen hundred dollars each; six for one thousand dollars each; & one for five thousand dollars—all drawn by the said Pierre Sauvé to his own order, and by him endorsed, dated the 26th February, 1858, and made payable one year after date, with interest from maturity, till paid, at the rate of eight per cent. per annum.

3°. By an act before the said notary, Theodore Guyol, passed on the 3rd day of April, 1860, the said Pierre Sauvé granted a mortgage in favor of Louis F. Généres, of the city of New Orleans, to
78 secure the payment of the sum of twenty thousand dollars, amount of eight promissory notes drawn by the said Pierre Sauvé to his order, and by him endorsed, dated 3rd April, 1860—one for six thousand dollars; two for twenty-five hundred dollars; one for twenty-four hundred and thirty-two dollars; one for twenty-two hundred dollars; one for fifteen hundred and sixty-eight dollars; one for fifteen hundred dollars; and one for thirteen hundred dollars—all bearing interest, from maturity till paid, at eight per cent. per annum, and payable at the Bank of Louisiana in one year after date.

4°. By an act passed on the 15th day of April, 1861, before the said Theo. Guyol, notary, M. Pierre Sauvé granted a mortgage in favor of Messrs. J. W. Burbridge & Co., of the city of New Orleans, a commercial firm in said city composed of J. W. Burbridge and Thomas D. Miller, to the extent of the sum of thirty thousand dollars, to secure the payment of all advances, in cash & supplies, and to secure the said firm against all loss, damage, &c., which they may suffer or incur by reason of their acceptances, &c., and also to secure to them the full and final payment of any and all sum & sums of money which may be due and owing by the said Pierre Sauvé to the said J. W. Burbridge & Co., together with all eventual interest and attorney's fees.

79 5°. From a judgment rendered on the 17th November, 1865, & signed on the 23rd day, same month & year, by A. Cazabat, judge of the second jud'l dist. court of La. in & for the parish of Jefferson, in the case of Gaston Bruslé vs. P. Sauvé, No. 2606 of the docket of said court, there results a judicial mortgage against the said Pierre Sauvé and in favor of the said Gaston Bruslé, for the sum of five thousand dollars, amount of a promissory note drawn by the said P. Sauvé to his own order, and by himself endorsed, dated New Orleans, March 29th, 1860, payable one year after date, with interest at the rate of eight per cent. per annum from maturity till paid, and paraphed "Ne varietur" by Theo. Guyol, notary, in New Orleans; also for the sum of four dollars costs of copy of the act of mortgage and five per cent. attorneys' fees on the whole amount of said note & interest, & all costs of suit.

6°. From a judgment rendered by the sixth district court of New Orleans, on the 15th of March, 1866, in the case of Albin Rochereau vs. Pierre Sauvé, No. 18001 of the docket of said court, there results a judicial mortgage against the said Sauvé and in favor of Albin Rochereau for the sum of thirty-five thousand dollars, with eight per cent. per annum interest thereon from the 26th February, 1861, till final payment; five per cent. on said sum and interest for attorney's fees; five dollars
costs of notarial act, & costs of suit, with special mortgage, to
80 take effect from the 28th February, 1858, on the property described
in plaintiff's petition.

All the above-recited mortgages, except the "fourthly" described, effect the following-described plantation, viz:

A certain sugar-plantation, situate in the parish of St. Charles, on the right bank of the Mississippi River, about twenty-one miles above the city of New Orleans, and composed of two tracts of land, one having fourteen arpents front on said river, and extending in depth about seventy-five arpents, and the other having four arpents and twenty toises front on said river by eighty arpents in depth, bounded above by the plantation of F. E. Wilson & Co., and below by that of Ezra Davis, together with the buildings & improvements, stock, cattle, horses, mules, &c., on said plantation, and a number of slaves, whose names & ages are fully described in each act of mortgage above-mentioned, then attached to said plantation.

The "fourthly" described mortgage effects not only the above-described plantation, &c., but also a certain tract of land belonging to the said Sauvé, situate in the parish of Jefferson, in this State, on the left bank of the Mississippi river, more fully described in said act of mortgage.

In faith whereof I have hereunto signed my name and affixed the seal of my office on the 31st day of March, 1866.

(Signed) T. T. BANDOINN, *Recorder.*

81 Approved May 5th, 1866.

(Signed) T. T. BANDOINN, *Recorder.*

When and where, Edward Dupasseur, esq., a subject of the French empire, and a resident of the city of New Orleans, being the highest and last bidder, on the hereinbefore-described property, buildings, stock, &c., &c., the same was adjudicated to him, for the price and sum of sixty-four thousand one hundred & fifty-one dollars cash; out of which amount of adjudication the said purchaser, has retained in his hands the sum of forty-nine thousand one hundred & four $\frac{95}{100}$ dollars, to satisfy his mortgage-claim on said property, and the balance, fifteen thousand forty-six $\frac{05}{100}$ dollars, I acknowledge to have received in lawful money of the United States of America, from the said Edward Dupasseur, purchaser as aforesaid, and which amount of fifteen thousand forty-six $\frac{05}{100}$ dollars, I retained in my hands for the purposes of paying all clerk's & marshall's costs & expenses accrued and due under said writ, & all taxes and any other claim or claims the judge may decree to be just and correct:

Now, therefore, know all men by these presents that I, the United States marshall aforesaid, in consideration of the within adjudication and by virtue of laws in such cases made & provided, do hereby sell, transfer, assign, and set-over unto the said Edward Dupasseur, purchaser as aforesaid, his heirs, administrators, executors, and as-
82 signs, all and singular, the property, moveable & immoveable, hereinbefore described, together with all the buildings & improvements, stock, &c., &c., thereon, rights, ways, & privileges, hereditaments, and appurtenances to the same belonging and in anywise appertaining: To have and to hold the aforedescribed property, unto the said Edward Dupasseur, the aforenamed purchaser, his heirs and assigns, as aforesaid, to them and their proper use & behoof forever.

In testimony whereof I grant these presents, under my signature as U. S. marshall aforesaid, in the said city of New Orleans, on this fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninetieth.

(Signed) CUTHBERT BULLITT,
U. S. Marshall.

Executed in presence of—
(Signed) A. BANDOINN.
" A. BOISBLANC.

[$50.00 U. S. I. R. stamp, cancelled.] [$10.00 U. S. I. R. stamp, cancelled.] [$3.50 U. S. I. R. stamp cancelled.] [$1.00 U. S. I. R. stamp cancelled.]

United States circuit court, eastern district of Louisiana.

CLERK'S OFFICE.

I certify that the foregoing deed of sale has been this day recorded in this office, in book No. 2 of sales, pages 81 to 85, inclusive.

Witness my hand & seal of said court, at New Orleans, this 21 May, 1866.

[SEAL.] (Signed) F. B. VINOT, *D'y-Clerk.*

[5-ct. I. R. stamp, cancelled.]

83 I, the undersigned recorder of the parish of St. Charles, do hereby certify that this deed of sale was recorded in the conveyance-office of said parish, book E, folios 285 & following, this 23rd day of May, 1866.

[SEAL.] (Signed) T. T. BANDOINN, *Recorder.*

[U. S. I. R. stamp cancelled. 5 c'ts.]

Copy of certificates, marked "C," offered in evidence by counsel for def't, No. 18274, *6th dist. court.—Filed* 13*th Dec.*, 1867.

I, the undersigned, do hereby certify that, on this day, 12th December, 1862, Mr. Phillipe Bidault has presented himself before me for the recording in the mortgage-office of this parish, of an act of sale of a plantation & slaves, situate in said parish, dated 12th June, 1862, and purporting to be a sale by Charles Anderson Jacobs to Pierre Sauvé, which said act could not be recorded to-day, the court-house being shut up, & the sheriff of this parish having the key in his possession.

Parish of St. Charles, Nov. 12th, 1862.

(Signed) C. ST. MARTIN, *Recorder.*

I, the undersigned, do hereby certify that, on the 11th March, 1863, Mr. Phillipe Bidault has presented to me for recording, in the mortgage-office of this parish, and act of sale of plantation & slaves, &c., 84 dated 4th June, 1852, purporting to be a "sale by Charles Anderson Jacobs to Pierre Sauvé," which said act cannot be recorded to-day in said office, the court-house being locked up and the key thereof in the possession of the dep'ty-sheriff or sheriff of said parish, who both are absent.

Parish of St. Charles, March 11th, 1863.

(Signed) C. ST. MARTIN, *Recorder.*

I, the undersigned, do hereby certify that, on this 22nd April, 1863, Mr. A. F. Numa Brow had presented to me for recording in the mortgage-office of this parish, an act of sale of a plantation & slaves, &c., dated 4th of June, 1852, purporting to be "a sale by Charles Anderson Jacobs to Pierre Sauvé," which said act cannot be recorded to-day in said office, the court-house being locked up and the key thereof in the possession of the dep'ty-sheriff or sheriff of said parish, who both are absent.

Parish of St. Charles, April 22nd, 1863.

(Signed) C. ST. MARTIN, *Recorder.*

I, the undersigned recorder of the parish of St. Charles, do hereby certify that the foregoing is a true transcript of three certificates annexed to the conveyance-book, letter "C."

Recorder's office, Parish of St. Charles, April 19th, 1866.

[SEAL.] (Signed) T. T. BANDOINN, *Recorder.*

[U. S. I. R. stamp 5 c'ts, cancelled.]

85 *Certificate marked "D," offered in evidence by counsel for def't, No.* 18274, *6th dist. court.—Filed* 13*th Dec.*, 1867.

STATE OF LOUISIANA, *Parish of St. Charles:*

I, the undersigned, T. T. Bandoinn, recorder of the parish of St. Charles, do hereby certify that, according to mortgage book No. 11, in my office, folio 236, No. 2070, re-inscription was entered on the fifteenth day of May, eighteen hundred & sixty-five, (1865,) by P. J. Kramer, recorder of this parish, of an act before Theo. Guyol, not. pub. in New Orleans, dated 12th June, 1852, purporting to be mortgage by Pierre Sauvé, in favor of Charles Andrew Jacobs. That on the margin of the said folio it reads the following note:

"It appears by the annexed certificates of the re-inscription in conveyance-book, that three different efforts were made, one prior to the 12 Nov., 1862, & two a short time thereafter, by the holder of the mortgage-notes, E. Dupasseur, to have said act re-inscribed, and the same could not be done in consequence of the absence of the proper officer.

(Signed) "P. J. KRAMER,
"*Recorder.*"

Parish St. Charles, recorder's office, November 6th, 1867.

[SEAL.] (Signed) T. T. BANDOINN,
Recorder.

86 *Document "E," offered in evidence by counsel for pl'ff, No.* 18274, *6th dist court.—Filed* 13*th Dec.*, 1867.

STATE OF LOUISIANA,
Office Secretary of State:

Extract from book containing record of commissions issued from the 8*th day of August to the* 26*th day of July*, 1865.

Names.	Residence.	Date of commission.	Office.	Date of oath.
P. Joseph Kramer...	St. Charles..	August 16th, 1864...... Superceeded by J. J. Boindoin, June 23, '65.	Recorder in & for the parish of St. Charles.	August 17th, 1864.

I, J. H. Hardy, secretary of state, do hereby certify the foregoing to be a true and correct extract from the book in my office, in which are recorded the names, residences, date of commission, office, & date of oath of office of all who have received commissions from the 8th day of August, 1864, to the 26th day of July, 1865.

Given under my hand & the seal of the State of Louisiana, at New Orleans, the 26th day of November, A. D. 1867.

[SEAL.] (Signed) J. H. HARDY,
Secretary of State.

Return to commission marked "F," offered in evidence by counsel for pl'ff.—Filed 13 *Dec.*, 1867.

Sixth district court of New Orleans.

87 State of Louisiana to any judge or justice of the peace of the parish of St. Charles, greeting:

ALBIN ROCHEREAU
vs,
EDWARD DUPASSEUR. } No. 18274.

Know ye that we, reposing confidence in your prudence and fidelity, do, by these presents, give you authority deligently to examine all witnesses whatever, as well on the part of plaintiff as of the defendant, in the above-entitled suit now pending in the sixth district court of New Orleans.

Therefore, we desire you that, at certain times and places, by you to

be appointed for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart, upon their respective corporal oaths first taken before you upon the Holy Evangelists; that you reduce the examinations to writing, and cause the witnesses to sign the same, and when you shall so have taken them, that you send the same with this commission closed up under your seal, to us in our sixth district court, at the city of New Orleans, with-
88 out delay.

Witness the Honorable G. Duplantier, judge of our said court, this 8th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and in the 92nd year of the Independence of the United States.

[SEAL.] (Signed) W'M WOELPER, *Clerk.*

Return before 25th Nov., 1867.
Interrogatories (see page 61.)
Cross-interrogatories (see page 64.)

Answers of witnesses annexed to commission.

STATE OF LOUISIANA,
Parish of St. Charles:

Depositions of witnesses taken and subscribed to before me, Alcibiade Durapau, justice of the peace, duly qualified, in and for the second ward of the parish of St. Charles, Louisiana, herein acting in virtue of & pursuant to a commission issued out of the sixth district court of New
89 Orleans, State of Louisiana, and addressed "to any judge or justice of the peace of the parish of St. Charles," said depositions to be read and used in evidence in a certain cause pending in the court aforesaid, wherein Albin Rochereau is plaintiff, and Edward Dupasseur is defendant, being No. 18274 of the docket of the said court.

The following witnesses, known to me to be of lawful age, being produced before me, and being by me first duly sworn, according to law, to testify the truth, the whole truth, & nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there on their oath aforesaid, depose and say, and answer as follows, to the following interrogatories and cross-interrogatories, to wit:

T. T. BANDOINN.

1. To the first interrogatory. No, sir; I am 'acquainted with them, excepting by reputation.

2. To the 2nd interrogatory. The parish of St. Charles; it has always been so.

90 3. To the 3rd interrogatrory. Yes, sir.

4. To the 4th interrogatory. Yes, sir; he was my predecessor.

5. To the 5th interrogatory. It appears from the entries made by him in the records of my office, that he took possession in September, 1864.

6. To the 6th interrogatory. I had the honor to be his successor, and I took possession in the begin'ing of July, 1865.

7. To the 7th interrogatory. To my knowledge it has never been closed from the time of appointment of Kramer."

8. To the 8th interrogatory. I know nothing else.

1. To the 1st cross-interrogatory. Celicourt St. Martin was the recorder. I do not recollect the exact date he continued to exercise his functions, but by entries of acts made by him, he had access to the office

until April, 1862, and, by certificates annexed to my records, he was acting as recorder until April, 1863. He continued to exercise his functions as recorder after the capture of the city of New Orleans by the Federal Army, to my personal knowledge, until October, 1862, and I do not know the exact date he ceased to act. I do not know of any acts recorded by him after April, 1862. As I said before, he had access to his records to my personal and individual knowledge, until October, 1862; about the last of September and the begin'ing of October, 1862, the officers of this parish were disturbed in their official functions by Federal troops then throughout this parish. Two recorders have been appointed since 1862: Mr. Peter J. Kramer and myself. Mr. Kramer commenced to act as recorder of this parish as it appears from the records of the recorder's office of this parish, in September, 1864, and he ceased when I took possession of the office, in July, 1865. 91

(Signed) T. T. BANDOINN.

Sworn to and subscribed before me this 11th day of November, A. D. 1867.

(Signed) A. DURAPAU, *J. P.*

CELICOURT ST. MARTIN, answers as follows, viz:

1. To the 1st interrogatory. "I am not acquainted with neither of them."

2. Second interrogatory. St. Charles. I did reside in it all the time.

3. Third interrogatory. "Yes."

4. Fourth interrogatory. "Yes, Mr. P. J. Kramer did exercise the functions of recorder of this parish of St. Charles."

5. Fifth interrogatory. He took possession of the office about the last part of August, 1864, and commenced to exercise his functions as recorder at about the same time, but I cannot *precise* the exact date of the month, and continued his said functions until about July, 1865. 92

6. Sixth interrogatory. Mr. T. T. Bandoinn, who took possession on or about the first day of July, 1865.

7. Seventh interrogatory. It is not to my knowledge that the office of recorder of this parish has ever been closed from the time of Mr. Kramer's entry in possession thereof, up to the time of Mr. Bandoinn's entry in possession of said office.

8. Eighth interrogatory. "I know nothing else."

I. First cross*ing*-interrogatory. I was the recorder of the parish of St. Charles. Not being removed from office, and considering myself to be the recorder of this parish, I continued to exercise the functions of my office until about the month of July, 1864. I did continue to perform the duties of recorder of this parish after the capture of the city of New Orleans by the Federal troops. I acted until or about the month of July, 1864. No acts were recorded by me subsequent to the month of May, 1862. I had access to my office until September or October, 1862." The court-house was dull and there was but few business transact*ed*. Two recorders: Peter J. Kramer & T. T. Bandoinn. Peter J. Kramer in August, 1864, and ceased in about the first of September, 1865; T. T. Bandoinn commenced about the first of September, 1865, and still holds his office." 93

II. Second cross-interrogatory. "Yes;" on or about the month of December, 1862, Mr. Philippe Bidault presented to me for re-inscription an act of sale of plantation & slaves, &c., situate in this parish, dated

12th June, 1852, & purporting to be a sale by Charles Anderson Jacobs to Pierre Sauvé, which said act could not be recorded in my office, the court-house being shut up & the keys in the possession of the sheriff. I delivered to that effect a certificate to Mr. Bidault.

III. Third interrogatory. Yes; on or about the month of March, 1863, Mr. Bidault presented to me for re-inscription the same act, which couldn't be done for the same reason. I delivered again another certificate *con*stating that said act couldn't be registered.

IV. Fourth cross-interrogatory. "Yes; on or about the month of April, 1863, Mr. A. F. Numa Brou, in the name of Mr. E. Dupasseur, presented to me the same act for re-inscription in the recorder's office, which was
not recorded for the reasons already stated." No; the same act
94 has never been presented to me since that time, (here the witness
remarks that he means since the month of April, 1863.) "Can
not say the date the said act was recorded, but it is to my knowledge that it was recorded by Peter J. Kramer, recorder." As to the efforts made by E. Dupasseur, to have said act recorded or re-inscribed, certificates were delivered to Mr. Bidault & Brou to that effect. "I have no memorandum of said certificates delivered by me, as recorder at the said time."

V. Fifth cross-interrogatory. I don't know any other particulars to the case.

(Signed) C. ST. MARTIN.

Sworn to & subscribed before me this 11th day of November, 1867.

(Signed) A. DURAPAU, *J. P.*

I, the undersigned A. Durapau, justice of the peace in and for the 2nd ward of the parish of St. Charles, do hereby certify that the foregoing depositions of Celiçourt St. Martin & T. T. Bandoinn were taken by me on the day and date subscribed to each of them, in the parish of St. Charles; that the examination, responses, and statement of the said witnesses were reduced to writing by me, and were by each of said wit-
nesses, respectively, sworn to and subscribed in my presence
95 at the time and place aforesaid. Whereof I make this my return
with the said commission and interrogatories and cross-interrogatories annexed hereunto.

In testimony whereof I do hereunto set my hand, officially, at the parish of St. Charles, Louisiana, on this 11th day of November, A. D. 1872, and in the 92 year of the Independence of the United States of America.

The laws in this State do not require that I should keep a seal of office.

(Signed) A. DURAPAU, *J. P.*

[U. S. I. R. stamp 5-c'ts, cancelled.]

Order: Continuance.—"Minutes," Friday, 13th *December*, 1867.

ALBIN ROCHEREAU
vs. } No. 18274.
EDWARD DUPASSEUR.

This case came on to-day for trial—Johnson & Denis & E. A. Bradford, for pl'ff; Roselius & Philips, for def't—when, after hearing pleadings and evidence, it is ordered that the same be continued to Thursday next for trial.

Order: Continuance.—"Minutes," Thursday, 19th December, 1867.

96 ALBIN ROCHEREAU
vs. } No. 18274.
EDWARD DUPASSEUR.

This case was called to-day for further trial, and, after hearing counsel for both parties, was ordered to be continued to the 18th January next, at 11 a. m.

Note of evidence.—Filed 18 *January,* 1868.

In 6th district court, Jan'y 18th, 1868.

ROCHEREAU
vs. } 18274.
DUPASSEUR.

On trial this day.

Counsel for def't now files document now marked "Z."

Counsel for pl'ff offers certificate now filed & marked "Y" in evidence.

Record in case No. 3395, *of the circuit court of the U. S., marked "Z," now filed & offered in evidence by counsel for def't.—Filed* 18*th January,* 1868.

United States circuit court.

EDWARD DUPASSEUR
vs. } No. 3395.
PIERRE SAUVÉ.

97 *Copy of petition for a sequestration.—Filed December* 1*st,* 1863.

To the honorable the sixth judicial circuit court of the United States, for the eastern district of Louisiana:

The petition of Edward Dupasseur & Co., a commercial firm located in this city, and composed of Edward Dupasseur, residing in New Orleans, and Eugene Lecoq & Victor Lecoq, residing in Havre, France, all being bona-fide neutral subjects of the French Empire, respectfully represents that Pierre Sauvé, residing in the parish of St. Charles in this State, is justly and legally indebted to your petitioner in the full sum of thirty-seven thousand and eleven $\frac{99}{100}$ dollars, ($37,001.99,) exclusive of interest and costs, for this, to wit: That your petitioner is the holder and owner of a certain promissory note for said amount, drawn by said Pierre Sauvé, dated New Orleans, April 5th, 1861, and payable one year after date to his own order, and by him endorsed at the bank of Louisiana, N. O., with eight per centum interest per annum from maturity
98 until paid; that, at the maturity of said note, the same not
having been paid, it was duly protested for non-payment; all of which, together with other necessary particulars, will more fully appear by reference to said note and protest, marked "A," attached to and made part of this petitition. That said note was made and given to your petitioner under the following circumstances, to wit: That, on the 12th June, 1852, by an act before Theodore Guyol, late a notary public in

this city, the said Pierre Sauvé, for and in consideration of the price of
one hundred and sixty-three thousand dollars cash, and the balance
upon terms of credit, and in the form in said act of sale set forth, pur-
chased of Charles A. Jacobs a certain sugar-plantation, situate in the
parish of St. Charles, in this State, on the right bank of the river Missis-
sippi, at about twenty-one miles above the city of New Orleans, and
composed of two tracts of land, one measuring fourteen arpents front on
said river, and extending in depth about seventy-five arpents, more or
less, bounded on the lower line by the property of Massicot, lately
99 belonging to E. Rine, and the other tract, measuring four arpents
and twenty toises, more or less, front on said river, by eighty ar-
pents in depth, adjoining on the upper side the plantation of George
Rixner, and on the lower side the tract first-mentioned; together with
all and singular the buildings and improvements, sugar-mill & machin-
ery, the crop, stock, cattle, horses, mules, farming-utensils, and imple-
ments of husbandry, and all other movable effects on said plantation,
and one hundred and fifty-one slaves attached to and employed on the
said plantation, whose names and ages are as follows, to wit: ("See pages
27 to 32.")

As will fully appear, together with other necessary particulars from
said act of sale, a duly certified copy of which is attached to and made
part of this petition, marked "B;" that the purchase-price of said
sugar-plantation, &c., was paid by Pierre Suavé to said Charles A.
Jacobs, with the exception of one of said five promissory notes given by
him in part payment of the same, to wit: A certain promissory note for
twenty-nine thousand one hundred and twenty dollars, dated New Or-
leans, June 4th, 1852, drawn by said P. Suavé, and payable, five
100 years after date, to his own order, and by him endorsed at the
Bank of Louisiana in this city, with seven per centum interest
per annum after due until paid; that at maturity, the same not having
been paid, it was duly protested for non-payment; all of which, together
with other necessary particulars, will more fully appear by reference to
said note and protest, marked C, attached to and made part of this pe-
tition; that in order to secure the punctual payment of said note and
others, the said C. A. Jacobs retained the vendor's lien and privilege,
and accepted a special mortgage upon said plantation, buildings,
improvements, sugar-mill & machinery, crop & stock, cattle, horses,
mules, farming-utensils, and implements of husbandry, slaves, &c., &c.,
upon the same.

That, on or about the 11th October, 1858, the holder of said note, Charles
A. Jacobs, being unable to obtain payment of the same, instituted suit
in the hon. the third judicial district court of Louisiana in and for the
parish of Jefferson, against said Pierre Sauve, in order to recover the
amount of said note, with interest and costs, by judgment & execution,
to be paid by preference and right of special mortgage & privilege,
101 as vendor, out of said property before described; that, on the
21st Nov., 1859, judgment was rendered, in favor of said Jacobs,
against said Sauvé, for the amount claimed, & recognizing all his rights
to priority & preference in payment on said plantation, &c.; that, shortly
thereafter, the said Sauvé was ordered to pay the amount of said judg-
ment, with interest and costs, into the hands of the sheriff of the parish
of Jefferson, there to await certain issues; all of which, together with
other necessary particulars, will more fully appear by reference to said
suit, entitled G. R. Jacobs vs. Pierre Sauvé, No. 1339, of the docket of
said court, a duly certified transcript of which, marked D, is attached
to and made part of this petition.

That the amount due by said Pierre Sanvé under said judgment, in principal, interest, and costs, on the 5th April, 1861, was thirty-seven thousand and eleven $\frac{22}{100}$ dollars; that, being unable to pay the same, he, on that day, borrowed the same from your petitioner for that purpose, and subrogated your petitioner to all the rights of said George R. Jacobs in the premises; that said sum was duly paid to said G. R. Jacobs, & the same acknowledged, and your petitioner duly subrogated to all the rights, actions, privileges, remedies, and mortgages of
102 said Jacobs, as the holder of said note, judgment creditor, with right of special mortgage and vendor's lien, and privilege; that said lean, as aforesaid, was witnessed by the before-described note for the sum of thirty-seven thousand and eleven $\frac{22}{100}$ dollars, dated New Orleans, April 5, 1861, and payable one year after date, drawn by said Pierre Sauvé, and payable to his own order, at the bank of Louisiana, with 8 per cent. interest from maturity until paid, the same having been duly protested for non-payment at maturity; all of which, together with other necessary particulars, will more fully appear by reference to said act of subrogation, passed before Theodore Guyol, late a notary public in this city, on the 5th of April, 1861, a duly certified copy of which is attached to and made part of this petition, marked E, which, although amicably demanded, he refuses to pay; that the crop of sugar-cane upon said plantation is now being taken off and converted into sugar and molasses, and your petitioner has good cause to fear that the same will be removed from said plantation, and sold to the prejudice of his rights in the premises; that, under the circumstances, a writ of sequestration is the only adequate remedy for the security of his
103 just and legal rights aforesaid; wherefore the premises & the annexed bond and affidavit considered, your petitioner prays that writ of sequestration may issue in his favor against the crop, standing or cut, of sugar-cane, upon said before-described plantation, as well as against the sugar and molasses, made or being made, or to be made from the same, and against the stock, cattle, carts, mules, farming-utensils and implements of husbandry, and against all other moveable property of any and every character whatsoever upon said plantation, or belonging to the same and against said plantation, &c.; that said defendant Pierre Sauvé may be cited to appear and answer this petition; that, after due proceedings had, judgment may be rendered in favor of your petitioner against said defendant, for the aforesaid sum of thirty-seven thousand and eleven $\frac{22}{100}$ dollars, with interest thereon, at the rate of eight per centum interest, from 5th April, 1862, until paid; two $\frac{55}{100}$ dollars costs of protest, and costs of suit, to be paid by right of special mortgage, and with vendor's lien and privilege upon said before-described sugar-plantation, buildings, improvements, slaves, stock, crop, cattle, mules, &c., and all property moveable and immoveable, upon said plan-
104 tation, or belonging thereto; that, after due compliance with all legal formalities, the same may be sold for cash, for an amount sufficient to pay said judgment, with interest and costs, as aforesaid, by preference, right of special mortgage and vendor's lien and privilege, & before all other creditors, &c.; and your petitioner prays for all such other and further aid, relief, and remedy, as the nature of the case may require and the law will permit, and as in duty bound—

C. ROSELIUS,
Att'y for Plaintiff.

Edward Dupasseur, a member of the commercial firm of Edward Dupasseur & Co., the petitioners, being duly sworn, deposes and says:

That all the facts and allegations in the foregoing petition contained are correct and true; that said firm of Edward Dupasseur & Co., of which affiant is a member, holds the vendor's lien and privilege, & a special mortgage upon said before-described plantation, buildings & improvements, slaves, stock, mules, cattle, horses, farming-utensils, and all property, moveable or immoveable, upon or belonging to the same, for the payment of said note of thirty-seven thousand & eleven $\frac{99}{100}$
dollars, with interest, &c.; that the crop of sugar-cane grown
105 upon the same is now being cut & taken off & converted into
sugar & molasses, and affiant has good reason to fear that the same will be removed from said plantation and sold, to the prejudice of the rights and privileges, as aforesaid, of his said firm; and that a writ of sequestration is the only adequate remedy for the security of their just and legal rights.

EDW. DUPASSEUR.

Sworn to and subscribed before me this first day of December, 1863.

F. B. VINOT, *D'y-Clerk.*

Order.

Let a writ of sequestration issue as prayed for, on the plaintiff entering into bond and security in the sum of fifteen thousand dollars, conditioned as the law directs.

New Orleans, December 1st, 1863.

E. H. DURELL, *Judge.*

Document "A."—Filed Dec. 1st, 1863.—Protest.

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this eight day of April, in the year one thousand eight hundred and sixty-two, at
the request of Messrs. Ed. Dupasseur & Co., holder of the original
106 note, whereof a true copy is on the reverse hereof written, I,
Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said note to the proper officers at the Bank of Louisiana, in this city, where it was payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of W. G. Latham and Prosper Camus, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the and year first above written.

[SEAL.] THEO. GUYOL,
Notary Public.

107 $37,011.99.] NEW ORLEANS, *April 5th*, 1861.

One year after date, I promise to pay to the order of myself, at the Bank of Louisiana, N. O., thirty-seven thousand & eleven $\frac{99}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

P. SAUVÉ.

(Endorsed:) P. Sauvé.

Ne varietur. New Orleans, April 5, 1861.

THEO. GUYOL, *Not. Pub.*

Note annexed to foregoing protest.

$37,011.99.] NEW ORLEANS, *April 5th*, 1861.

One year after date, I promise to pay to the order of myself, at the Bank of Louisiana, N. O., thirty-seven thousand & eleven $\frac{99}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

P. SAUVÉ.

No. . Due .

(Endorsed:) P. Sauvé.

Ne varietur. New Orleans, April 5, 1861.

THEO. GUYOL, *Not. Pub.*

Document "C."—Filed Dec. 1st, 1863.—Protest.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that, on this sixth day of June, in the year one thousand eight hundred and fifty-108 seven, at the request of the Union Bank of Louisiana, holder of the original note, whereof a true copy is on the reverse hereof written, I, Theodore O. Stark, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to the cashier at the Bank of Louisiana, in this city, where the same is made payable, and demanded payment thereof, through my deputy, Edward Allen, who was answered that no funds had been deposited there to pay the same, and was informed by the cashier of the Union Bank that said P. Sauvé had left with him the annexed written statement as his reasons for not paying said note. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Edward Allen and James B. Williams, jr., witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

109 [SEAL.] THEODORE O. STARK,
Notary Public.

$29,120.] NEW ORLEANS, *June 4th*, 1852.

Five years after date, I promise to pay to the order of myself, at the Bank of Louisiana, in this city, twenty-nine thousand one hundred and twenty dollars $\frac{00}{100}$, value received, with seven per cent. interest per annum after due until paid.

P. SAUVÉ.

(Endorsed:) P. Sauvé, G. R. Jacobs.

Ne varietur. New Orleans, June 12, 1852.

THEO. GUYOL.
Not. Pub.

Note annexed to foregoing protest.

$29,120.] NEW ORLEANS, *June 4th*, 1852.

Five years after date, I promise to pay to the order of myself, at the Bank of Louisiana in this city, twenty-nine thousand one hundred and twenty dollars $\frac{00}{100}$, value received, with seven per cent. interest per annum after due until paid.

No. 464. Due June 4th, '57.

P. SAUVÉ.

(Endorsed:) P. Sauvé, G. R. Jacobs.

Ne varietur. New Orleans, June 12, 1852.

THEO. GUYOL,
Not. Pub.

110 *Document "D."—Filed Dec. 1st*, 1863.

Third judicial district court.

G. R. JACOBS
vs. } No. 1339.
PIERRE SAUVÉ.

(Indorsed:) Third judicial district court of Louisiana. Parish of Jefferson. No. 1339. G. R. Jacobs vs. Pierre Sauvé. Pet'n. Note. Ac't. V. H. Joy, att'y. Filed Oct., 1858.

Petition.

G. R. JACOBS
vs. } 1339.
PIERRE SAUVÉ.

To the hon. the judge of the third judicial district court of Louisiana, parish of Jefferson.

The petition of George R. Jacob, who resides in the State of Missouri, respectfully shows that Pierre Sauvé, who resides in the parish of Jefferson, is indebted to petitioner in the sum of twenty-nine thousand and one hundred and twenty dollars, ($29,120,) with seven per cent. per annum interest thereon, from the 4th day of June, 1857, until paid, for this, to wit: That your petitioner is the holder & owner of a certain promissory note, drawn by defendant to his own order, and by
111 him endorsed, for the said sum of $29,120, dated at New Orleans, the 4th June, 1852, and payable at the Bank of Louisiana, in New

Orleans, five years after date, and bearing interest at the rate of seven per cent. per annum from maturity until paid.

Petitioner further shows that, in order to secure the full and punctual payment of said note at i's maturity, together with the interest thereon, the said defendant did, on the 12th June, 1852, by act of that date, passed before Theo. Guyol, notary public at New Orleans, specially mortgaged and hypothecated a certain plantation, with the slaves and appurtenances thereof, in the parish of St. Charles, of this State, on the right bank of the river Mississippi, at about twenty-one miles above the city of New Orleans, all of which is more fully and accurately described and designated in said act, and as will appear by view of the duly authenticated copy thereof hereunto annexed for reference; that the said note was presented, in vain, for payment, at its maturity, and, therefore, duly protested for non-payment, as will appear by reference to said note and protest, hereto annexed as part hereof, and marked "ne
varietur," to identify it with the above-mentioned act; that the said
112 is past due and still not paid, notwithstanding amicable demand.

Wherefore, petitioner prayed that defendant be served with a copy of the petition, and be cited to appear and answer the same; and, after due proceedings had, judgment be rendered in favor of petitioner and against defendant, for the said sum of $29,120, with seven per cent. per annum interest thereon from maturity of said note until paid, together $3, cost of protest, and $6, cost of copy of act, and costs of court, and for special mortgage on the property described in said act. And petitioner prays for all and general relief in the premises, as in duty bound, &c.

V. H. JOY, *Att'y.*

Order.—November 21st, 1859.

For the reason assigned:

It is ordered, adjudged, and decreed that the defendant, Pierre Sauvé, do pay into the hands of the sheriff, to be by him subject to the further order of this court, the amount sued on, viz, the sum of twenty-nine thousand one hundred & twenty dollars, with interest thereon at the rate of seven per cent. per annum from the 4th day of June, 1857; and
it is further ordered that further proceedings herein be suspended
113 until the decision of the suit George May vs. Pierre Sauvé, in the
fourth district court of New Orleans, referred to in defendant's
answer.

Judgment rendered November 21st, 1859.

VICTOR BURTHE, *Judge.*

NOTE.—Note, protest, & act withdrawn April 4th, 1861.

G. S. McTHURLUT, *Pl'ff Att'y.*

Citation & return.

The State of Louisiana, parish of Jefferson, third judicial district court.

Mr. PIERRE SAUVÉ:

You are hereby sum'oned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the third judicial district court, in the parish of Jefferson, in ten days after the service hereof.

Witness the honorable V. Burthe, judge of said court, this 11th day of October, in the year of our Lord 1858.

J. BUISON, *D'y-Clerk.*

G. R. JACOBS
vs.
PIERRE SAUVÉ.

114 Received, Oct. 15th, 1858, and, on the 16th of same month and year, served a copy of the within citation and accompanying petion on defendant, P. Sauvé, personally.

GUY DREUX, *Sheriff.*

Third judicial district court of Louisiana, parish of Jefferson.

GEORGE MAY
vs. No. 12756. 4th district court.
PIERRE SAUVÉ.

Petition.—Filed November 22nd, 1859.

To the honorable J. W. Price, the judge of the 4th district court, State of Louisiana:

The petition of George May, who resides in the city of New Orleans, and State aforesaid, shows, with respect: That Pierre Sauvé, who resides in the parish of Jefferson, is in the unlawful possession of fifty-seven $\frac{51}{100}$ acres of land in said parish of Jefferson, which belongs to your petitioner. Your petitioner shows that, under and by virtue of a school-warrant, No. 986, issued according to law by the State of Louisiana, he located, on the 2nd January, 1858, said warrant upon the fractional section No. 21, township 13, R. 21 east, which said land was thereby acquired under the laws of the United States and of Louisiana; that the said Pierre Sauvé, without colors of right or title, has illegally assumed the possession of land, pretending, under some convey-
115 ances from parties wholly destitute of title, to own the said land; all of which is well known to the said Sauvé, who refuses to surrender the possession of said property, though amicably requested so to do. Your petitioner alleges that said land fronts on the Mississippi River, is the centre of the sugar district in cultivation, and therefore worth, as he will be unable to prove, one hundred dollars per acre, and that the rent of said land, since petitioner's ownership commenced, to wit, the 2nd January, 1858, is worth the sum of twenty dollars per month. Your petitioner annexes the certificate of his location as the basis of his title. Wherefore he prays for citation, and, after proper proceedings, there be judgment in favor of petitioner, the owner of, and entitled to the possession of the land before described, and for judgment for the sum of twenty dollars per month for the rent of said property from the 2nd day of January, 1858, and for general relief.

McCAY, *Att'y.*

CLERK'S OFFICE, 4TH DISTRICT COURT,
New Orleans, 19*th Nov.,* 1859.

A true copy.

M. H. FLANAGAN, *D'y-Clerk.*

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116 Third judicial district court of Louisiana, parish of Jefferson.

GEO. R. JACOBS
vs No. 1339.
PIERRE SAUVÉ.

Motion.—Filed December 2nd, 1859.

GEORGE R. JACOBS }
vs. }
PIERRE SAUVÉ. }

Third judicial district court of Louisiana, parish of Jefferson.

On motion of Benjamin, Bradford & Finney, of counsel for the defendant, and on showing to the court that said defendant is dissatisfied with a judgment herein rendered against him, on the 21st day of November, 1859, in favor of the plaintiff, and said judgment is calculated to work an irreparable injury to the defendant, and that said defendant is desirous to take a suspensive appeal therefrom, it is ordered by the court that said defendant, Pierre Sauvé, have and be allowed a suspensive appeal from said judgment, returnable to the Supreme Court according to law, on the third Monday in January, 1860, on giving his bond, in favor of the plaintiff, in the sum of fifty thousand dollars, and conditioned as the law require', & with good and solvent surety.

Parish of Jefferson, December 21st, 1859.

VICTOR BURTHE, *Judge.*

117 *Bond.*

Know all men by these presents that we, Pierre Sauvé, principal, and Mrs. René Trudeau, surety, are held and firmly bound unto George R. Jacobs, his executors, administrators, and assigns, in the sum of fifty thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated in the parish of Jefferson, on this second day of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above-bounden Pierre Sauvé this day filed a petition of appeal from a final judgment rendered against him in the suit of G. R. Jacobs vs. Pierre Sauvé, in the third judicial district court, on the 21st day of November, 1859:

Now, the condition of the above obligation is such, that the above-bound Pierre Sauvé shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real & personal, if he be cast in the appeal; otherwise the said Mrs. René Trudeau, surety, shall be liable in his place.

P. SAUVÉ. [L. S.]
MRS. RENÉ TRUDEAU. [L. S.]

Signed & sealed and delivered in the presence of—
W'M BROCK.

118 *Citation.*

The State of Louisiana, third judicial district court, parish of Jeffer'.

To Mr. GEORGE R. JACOBS, greeting:

Whereas Pierre Sauvé this day filed in the office of the aforesaid court a petition of appeal from a certain final judgment lately rendered therein against him, said Pierre Sauvé, which appeal is returnable in the supreme court of the State of Louisiana, on the third Monday of January next: You are, therefore, hereby cited to appear, in person or by attorney, in the said court, on the day last aforesaid, to answer to the said appeal.

Witness the Honorable Victor Burthe, judge of our said court, this 13th day of December, in the year of our Lord 1859, and in the 84th year of the American Independence.

J. RIGAUD, *D'y-Clerk.*

Return service of the citation.

Received, December 13th, 1859, and, on the 14th day of same month and year, I served a copy of the within citation of appeal and accompanying petition, on Benjamin, Bradford & Finney, esq'r', of counsel for defendant. Returned September 6th, 1860.

P. C. LECOIGNE, *D'y-Sheriff.*

119 *Motion.*

Third judicial district court.

G. R. JACOBS
vs. } 1339.
PIERRE SAUVÉ.

On motion of Gaither and McPheeters, & C. Roselius, of counsel for plaintiff, it is ordered that the defendant, Pierre Sauvé, do show cause, on Friday, November 18th, at 10 o'clock a. m., why he should not deposit in the hands of the sheriff, subject to the order of this court,, the amount of the note sued on herein, with interest, on or the day fixed for the trial of this cause, & why, in case of his failure so to do, he should not be deprived of the benefits of the defence set up in his answer.

Extract from the minutes.

Clerk's office, November 14th, 1859.

A true copy.

J. RIGNAUD, *D'y-Clerk.*

Third judicial district court in and for the parish of Jefferson.

GEORGE R. JACOBS
vs. } 1339.
PIERRE SAUVÉ.

Petition and bond for appeal.—Filed December 12*th*, 1859.

Third judicial district court in and for the parish of Jefferson.

GEORGE R. JACOBS
vs. }
PIERRE SAUVÉ.

The petition of the defendant herein, Pierre Sauvé, respectfully represents that he is desirous to take a suspensive appeal from the judgment rendered herein against him and in favor of the plaintiff on
120 the 21st of November last, and seized on the 28th of the same

month; that the said judgment is calculated to work him irreparable injury. Wherefore the said defendant, Pierre Sauvé, prays your honor to grant him a suspensive appeal from the said judgment, returnable to the supreme court according to law, and said defendant giving bond in the sum of fifty thousand dollars, conditioned as the law requires, in favor of the plaintiff, & with good & solvent security; & that this defendant prays that the plaintiff be cited in appeal, & for all general equitable relief.

BENJAMIN, BRADFORD & FINNEY, *Att'ys.*

Appeal bond.

Know all men by these presents that we, Pierre Sauvé and veuve René Trudeau, of the parish of Jefferson, are held and firmly bound unto George R. Jacobs, in the sum of fifty thousand dollars, to be paid to the said George R. Jacobs, his heirs, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the parish of Jefferson, on this fourth day of December, eighteen hundred and fifty-nine.

Whereas the above-bounden Pierre Sauvé has prayed an appeal from
a judgment rendered by the hon. 3rd judicial district court in
121 and for the parish of Jefferson, on the 21st day of Nov. 1859, in
the suit of George R. Jacobs vs. Pierre Sauvé, which judgment
was signed on the 28th of the same month:

Now, the condition of the above obligation is such, that the above-bound Pierre Sauvé shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of sale of his estate, real or personal, if he be cast in the appeal; otherwise the said veuve René Trudeau surety, shall be liable in his place.

P. SAUVÉ. [L. S.]
VEU. RENÉ TRUDEAU. [L. S.]

Signed, sealed, & delivered in presence of—
WM. BROCK.

Let a suspensive appeal be granted as within prayed for, returnable to the supreme court, on the third Monday of January, 1860, upon appellant giving bond, with good and solvent security in the sum of fifty thousand dollars, conditioned as the law directs. At chambers, December 10th, 1859.

VICTOR BURTHE, *Judge.*

G. R. JACOBS
vs.
PIERRE SAUVÉ.

This case came on this day for trial—Gaither & McPheeters & C. Roselius for plaintiff; L. L. Levy, on behalf of Benjamin, Bradford &
122 Finney, for defendant—when, the court considering the premises,
the law and the evidence, and the rule taken herein on the fourteenth inst., and considered by order of the court with the merits—

It is ordered, adjudged, & decreed that the defendant, Pierre Sauvé, do pay into the hands of the sheriff, to be held by him subject to the further order of this court, the amount of note sued on, viz, the sum of twenty-nine thousand and one hundred and twenty dollars ($29,120) with interest thereon at the rate of seven per cent. per annum from the fourth day of June, 1857; and it is further ordered, that further proceedings herein be suspended, until the decision of the suit of George R. Jacobs vs. Pierre Sauvé, in the fourth district court of New Orleans, referred to in defendant's answer.

I, Robert Morris, clerk of the second judicial district court in and for the parish of Jefferson, State of Louisiana, hereby certify that the foregoing pages contain a full and complete copy of all the documents on file, and proceedings had, in the suit G. R. Jacobs vs. Pierre Sauvé, No. 1339 of the docket of this court.

Witness my hand and the seal of the said court A. D. 1863, and the 88th year of the Independence of the United States.

[SEAL.] ROB'T MORRIS, *Clerk.*

123 *Document "E."—Filed Dec. 1st, 1863.*

No. 199, 5th April, 1861. Subrogation. Pierre Sauvé to Ed. Dupasseur.

Be it known that on this fifth day of April, in the year of our Lord, one thousand eight hundred and sixty-one, before me, Theodore Guyol, a notary public, duly commissioned & sworn, for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Pierre Sauvé, of the parish of Jefferson, in this State; Edward Dupasseur, one of the members of the firm Edward Dupasseur & Co., of this city, and herein representing the same; and Christian Roselius and Gabriel P. McPheeters, attorney & counsellors at law, of this city, and herein acting as such for and on behalf of their client, George R. Jacobs of Missouri. And the said Sauvé declared that the said George R. Jacobs is the holder & owner of a promissory note, for the sum of twenty-nine thousand one hundred and twenty dollars drawn by him, said Sauvé, to the order of and endorsed by himself, dated on the fourth day of June, eighteen hundred and fifty-two, and made payable at the Bank of Louisiana in this city, in five years after date, with interest, at the rate of seven per 124 cent. per annum, from maturity until final payment, which note was given by him, said Sauvé, in part payment for a sugar-plantation situate in the parish of St. Charles, in this State, on the right bank of the river Mississippi, at above twenty-one miles above the city of New Orleans, and one hundred and fifty-one slaves thereunto attached, purchased by Charles Anderson Jacobs, by an act passed in this office on the twelfth day of June, eighteen hundred and fifty-two, by a clause in which act, he mortgaged the said plantation and slaves to his said vendor to secure the payment of said note and others; and whereas legal proceedings were instituted by the said George R. Jacobs for the recovery of the amount of said note and interest, the costs of which amount to the sum of forty-four dollars and fifteen cents, making the amount due on the said note in capital and interest, thirty-seven thousand and eleven dollars and ninety-nine cents ($37,011.99), and whereas he is unable to pay the said amount at present, and has therefore borrowed the same from the said Edward Dupasseur & Co., who have 125 agreed to lend it, on being subrogated to all the rights of the said George R. Jacobs in the premises, and therefore the said Edward Dupasseur, in the name of his said firm, handed to the said Sauvé the said sum of thirty-seven thousand and eleven dollars and ninety-nine cents, and he, the said Sauvé, immediately paid the same to the said Ro-

selius and McPheeters, who, in their capacities of attorneys of the said
George R. Jacobs, hereby acknowledge the receipt thereof; and in consideration
of the loan aforesaid, the Sauvé declared that he does, by
these presents, subrogate the said Edward Dupasseur & Co. in and to all
the rights, actions, privileges, remedies, and mortgages, to which the
said George R. Jacobs was entitled, as holder of the said promissory
note under and by virtue of the mortgage granted by him, the said
Sauvé, on the plantation and slaves, by a clause of his act of purchase
thereof, and also by virtue of any legal proceedings and judicial
126 decrees in relation to the same, hereby fully authorizing and empowering
the said Edward Dupasseur & Co. to exercise and enjoy
the said rights, actions, &c. in the same manner and to the same extent
that the said George R. Jacobs might or could have done. And the said
promissory note having been delivered by the said Roselius & McPheeters
to the said Edward Dupasseur on behalf of his said firm, the said
Sauvé hereby acknowledges himself to be indebted unto the said firm in
the aforesaid sum of thirty-seven thousand and eleven dollars and ninety-nine
cents, for which the said firm has agreed to grant him an extension
of one year for the payment thereof: Now, therefore, in order to represent
the said debt, and to fix the time of payment, the said Sauvé has
furnished his promissory note for the sum of thirty-seven thousand and
eleven dollars and ninety-nine cents, drawn to the order of, and endorsed
by himself, dated this day, and made payable at the Bank of
Louisiana in this city, in one year after date, with interest from and after
maturity, if not then punctually paid, at the rate of eight per
127 cent. per annum until final payment; which note after being paraphed
by me, said notary, to identify it with this act, was delivered
to the said Dupasseur, who acknowledges the receipt thereof, and
who also retains possession of the original note aforesaid, until the full
and final payment of the debt herein acknowledged by the said Sauvé.
And it is hereby agreed and understood the neither the issuing of the
said new note nor the present act of extension shall operate as a novation
of this original debt, nor impair or effect the validity of the mortgage
by which the payment thereof is secured, but that, on the contrary
the said mortgage shall be and remain in full force and virtue, and shall
not be cancelled until the full and final payment of the said new note.

Done and passed in my office in the city of New Orleans, on the day,
month, and year first above written in the presence William A. Latham
and Francis B. Vinot, witnesses, who have signed with the said
128 parties, and me the said notary, after reading the whole.

C. ROSELIUS.
G. P McPHEETERS.
P. SAUVÉ.
ED. DUPASSEUR & CO.

W. G. LATHAM.
F. B. VINOT.

THEO. GUYOL,
Not Pub.

The foregoing is a true copy of the original act, extant in the registers of Theodore Guyol, late notary public, which are in my possession and custody as his successor in office.

New Orleans, November 28th 1863.

FELIX McCULLOCH,
Notary Public.

Bond for sequestration.—Filed Dec. 1st, 1863.

EDWARD DUPASSEUR & CO.
vs.
PIERRE SAUVÉ.
} No. 3395.

Know all men by these presents that we, Edward Dupasseur & Co., and James D. Denegre, are held and firmly bound, jointly and severally, unto Pierre Sauvé, in the sum of fifteen thousand dollars lawful money of the United States of America, to be paid to the said Pierre Sauvé, heirs, executors, administrators, and assigns; for which payment
129 well and truly to be made, be bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents, sealed with our seals, and dated the first day of December, in the year of our Lord eighteen hundred and sixty-three.

Whereas Edward Dupasseur & Co. have this day presented a petition to the honorable the circuit court of the United States, for the sixth circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of sequestration:

Now, the condition of the above obligation is, that we, the above-bounden Edward Dupasseur & Co., and Ja's D. Denegre will well and truly pay to the said Pierre Sauvé the defendant in said suit & sequestration, all such damages as he may recover against us in case it should be decided that the said sequestration was wrongly obtained.

EDWARD DUPASSEUR & CO. [L. S.]
Per EDWARD DUPASSEUR.
JAMES D. DENEGRE. [L. S.]

Signed, sealed, & delivered in the presence of—
T. B. VINOT, *D'y-Clerk.*

130 *Writ of sequestration.*

EDWARD DUPASSEUR & CO.,
vs.
PIERRE SAUVÉ.
} No. 3395.

United States circuit court, sixth circuit and eastern district of Louisiana.

EDWARD DUPASSEUR & CO.,
vs.
PIERRE SAUVÉ.
} No. 3395.

The President of the United States to the marshal of the eastern district of Lousiana, greeting:

You are hereby commanded to sequester and take into your possession and keeping according to law, all and singular, a sugar-plantation, the property of the defendant, situated in the parish of St. Charles, in this State, on the right bank of the river Mississippi, about twenty-one miles above the city of New Orleans, together with the crop of the sugarcane thereon, whether standing or cut, as well as the sugar and molasses made from the same, and also the stock, cattle, carts, mules, horses, farming-utensils, and implements of husbandry, and all other
131 property upon said plantation, whether moveable or immovable,

and belonging to the same. And of what you shall do in the premises and of this writ make due return thereof to our said court.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at New Orleans, this first day of December, A. D. 1863.

[SEAL.] F. B. VINOT, *D'y-Clerk.*

Marshal's return.

Received Dec. 2nd, 1863, and, in obedience to the written precept, on the 3rd December, 1863, proceeded to the plantation mentioned within, in order to execute the said writ; and having proceeded to take an inventory of the property found on said plantation, and while performing this duty & the other duties, devolving on me, Charles Dewey, 1st lieutenant and provost-marshal*l* of the parish of St. Charles, did, on the 6th day of December, 1863, on said plantation, place in my hand the letter which is made part of this return, and did at the same time and place, put an armed guard of soldiers on the premises, and did instruct said guard, upon my attempting to proceed further in taking the 132 said inventory, and in performing my said duties, to place me under arrest, and did forbid me to proceed further in the performance of my duties; and, finding that I would be prevented from proceeding further in the performance of said duties, and that I was unable to resist the force brought to prevent me doing so, I left the plantation and returned to the city of New Orleans, where I arrived on the evening of the 6th of December, 1863.

JO'S S. BADGER,
D'y United States Marshal.

Letter of provost marshall annexed.

PROVOST-MARSHALL'S OFFICE,
Parish of St. Charles, Dec. 6th, 1863.

MR. BADGER,
Lone Star Plantation.

SIR: In obediance to orders just received, you are hereby directed to remove from the Star plantation, and interfere no more in its management, unless by the proper authority.

CHA'S DEWEY,
1st. Lieut. & P. M.

133 *Judgment.*

United States circuit court, sixth district court and eastern district of Louisiana. November term, 1865.

NEW ORLEANS, *Friday, February* 23, 1866.

Court met pursuant to adjournment. Present, Hon. Edw. H. Durell, district judge.

EDWARD DUPASSEUR & Co.,
vs.
PIERRE SAUVÉ.
} No. 3395.

On motion of C. W. Hornor, esq., on behalf of C. Roselius, esq., att'y for plaintiff, and on exhibiting to the court the judicial confession of the defendant, duly attested, it is ordered, adjudged, and decreed, that

the judgment by default taken on 8th instant, be now confirmed, and that Edward Dupasseur & Co., do have & recover from the defendant, Pierre Sauvé, the sum of thirty-seven thousand and eleven dollars and ninety-nine cents, with interest thereon, at the rate of eight per centum, from 5th April, 1862, till paid; two $\frac{55}{100}$ dollars costs of protest, and costs of suit, with vendor's lien and privilege upon the sugar-plantation, situate in the parish of St. Charles, Louisiana, together with all the buildings & improvements, sugar-mill, machinery, crop, stock, cattle, mules, utensils, & implements of husbandry, and all other moveable eff'ts thereunto belonging or in anywise appertaining, the whole being
134 more fully described in the notarial act on file and made part hereof.

Judgment rendered February 23rd, 1866.
Judgment signed February 24th, 1866.

E. H. DUBELL, *Judge.*

Writ of fieri facias.—Issued February 24th, 1866.

EDWARD DUPASSEUR & CO.,
vs.
PIERRE SAUVÉ.
No. 3395.

Circuit court of the United States for the sixth circuit holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded in that you demand from Pierre Sauvé the sum of thirty-seven thousand and eleven dollars and ninety-nine cents, with interest thereon, at the rate of eight per centum, from 5th April, 1862, till paid, $2.55 costs of protest, and costs of suit, with vendor's lien and privileges upon the sugar-plantation situate in the parish of St. Charles, Louisiana, together with all the buildings & improvements, sugar-mill, machinery, crop, stock, cattle, mules, uten-
135 sils, & improvements of husbandry, and all other moveable effects thereto belonging, or in any wise appertaining, the whole being more fully described in the notarial act on file and made part of this writ, cash, which Edward Dupasseur & Co., lately recovered by judgment of the circuit court of the United States for the 6th circuit and eastern district of Louisiana, copy of which is annexed & made part hereof; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Pierre Sauvé, in your district, if sufficient personal estate can be found therein, but, if sufficient personal estate cannot be found in your district, that then you cause the sum to be made out of the real estate of the said Pierre Sauvé, in your district, whereof he was owner on the 24th day of February, 1866, into whose hands soever the same may have come, and that you have those moneys before our said court to render to the said Edward Dupasseur & Co., for the judgment aforesaid, on the seventieth day from the date hereof, together with this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 24th day of February, A. D. 1866, and 90th year of the Independence of the United States.

[SEAL.]
CHA'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y-Clerk.*

136 *Marshal's return.*

Received February 24th, 1866, and, on the 27th day of same month and year, seized the property described in the written act sale, duly recorded in the said suit and more particularly defined in the said act now on file of record in said suit and referred to in this return as a part hereof, and appointed in accordance with law keeper of the said property, took a detailed inventory of the said property, moveable & unmoveable; &, on the 31st of March of the same year, after all the requisites of the law had been complied with, I duly advertised the said property for sale; the publications of which sale were made in the N. O. Times, in English, & in the N. O. Bee, in French, two of the newspapers printed & published in the city of New Orleans, on the 31st March, 7, 14, 21, 28 April, & 5 May, 1866, and in the Avant Courier, a newspaper printed and published in the parish of St. Charles, La., announcing the sale of said property to take place at the door of the courthouse of the said parish of St. Charles, on Saturday, the 5th day of May, 1866, at 12 o'clock m., when & where, after due proclamation & all the requisites of law being complied with, the said property, moveable & immoveable was adjudicated to Mr. Edward Dupasseur, 137 representing the plaintiffs in said suit, a subject of France, & a resident of this city, for the sum of sixty-four thousand one hundred & fifty-one dollars, in deduction of which amount he retained on account of his mortgage-claim the sum of forty-nine thousand one hundred & four $\frac{95}{100}$ dollars, & paid to me the balance of said adjudication, to wit, the sum of fifteen thousand forty-six $\frac{5}{100}$ dollars, in current money of the United States of America, which amount I acknowledge to have received for the payment of taxes, costs & expenses due under said writ, and all other claim or claims due on said property; and for the purposes aforesaid, and to abide all orders the court may render on the said claims.

Marshal's office 22nd May, 1866.
Returned satisfied.

A. BANDOIN, *Chief Deputy.*

Notice of seizure annexed to foregoing writ, and filed May 22d, 1866.

OFFICE OF THE UNITED STATES MARSHAL,
EASTERN DISTRICT OF LOUISIANA.

EDW. DUPLANTIER & CO.,
vs.
PIERRE SAUVÉ.
} U. S. circuit court. No. 3395.

To Pierre Sauvé, esq., a resident of the parish of Jefferson, State of La.:

138 Please take notice that, by virtue of a writ of fieri facias issued, and to me directed by the honorable the circuit court of the United States, for the sixth circuit and eastern district of La., in the above-entitled suit, I hereby notify you that I have this day seized the following-described property, viz: A certain sugar-plantation, situate in the parish of St. Charles, in this State, (known as the Lone-Star plantation,) on the right bank of the river Mississippi, at about twenty-one miles above the city of New Orleans, and composed of two tracts of land, one measuring fourteen arpents front on said river, and extending in depth about seventy-five arpents, more or less, bounded on

the lower line by the property of Massicot, lately belonging to E. Reine, and the other tract measuring four arpents and twenty toises, more or less, front on said river, by eighty arpents in depth, adjoining, on the upper side, the plantation George Rixner, and on the lower side the tract first mentioned, together with all and singular the buildings and improvements thereon, sugar-mill, and machinery; the crop, stock, cattle, horses, mules, farming-utensils, and implements of husbandry, and all other moveable effects on the said plantation, in order to satisfy
the plaintiff's claim herein, viz, the sum of thirty-seven thousand
139 and eleven & $\frac{22}{100}$ dollars, with interests and costs; and should the
said claim, interests, and costs, not be paid within three days from the service of this notice of seizure, then I will advertise for sale the said property, in accordance with law, in order to satisfy the said claim, suit, & costs.

New Orleans, 26th February, 1 66.

A. BOISBLANC,
D'y U. S. Marshal.

Marshal's return.

Issued 26th of February, 1866, and, on the 27th day of February, 1866, seized the property herein described, took inventory of the same, & appointed J. H. Preiss marshal's keeper of the said property.

(N. B.—The same property was already seized by the sheriff of the parish of St. Charles, and advertised to be sold. But, nevertheless, I made said seizure, and served copies of this notice personally, on def'd't, in this city, and overseer, on said plantation—J. I. Caldwell, overseer.)

A. BOISBLANC,
D'y U. S. M'l.

Motion of U. S. marshal.—Entered and filed May 22nd, 1866.

U. S. circuit court, eastern district of La.

EDWARD DUPASSEUR
vs.
PIERRE SAUVÉ.

On motion of Miles Taylor, of counsel for Cuthbert Bullitt, United
States marshall for the eastern district of Louisiana, & on sug-
140 gesting to the court that the said marshal, acting under an ex-
ecution of fi. fa., issued out of this honorable court in the above-entitled case, seized a certain plantation situated in the parish of St. Charles, and the buildings and improvements thereon, with the crop, stock, cattle, mules, utensils, & implements of husbandry, and all other moveable effects thereunto belonging, or in any way appertaining, as more fully described in the said execution or fi. fa., and made a sale of the same on the 5th day of May, 1866, according to law, at which sale Edward Dupasseur, representing the plaintiffs, became the purchaser, for the price & sum of sixty-four thousand one hundred and fifty-one dollars, ($64,151;) and, on further suggesting to the court that he procured from the recorder of mortgages of the parish of St. Charles a certificate of the mortgages existing on the said plantation, & its appurtenances, on the day of the sale; that before making the said sale, he read the said certificate of mortgages to the by-standers, according to law; that, by the said certificate of mortgages now

141 presented to the court, it appears that the following mortgages existed upon the said property:

1st. One in favor of Charles Henderson for $130,000, dated 12th June, 1852, then reduced to the sum of $29,120, with interest, &c., now owned or held by the plaintiffs in execution.

2nd. One in favor of Albin Rochereau, dated 26th Feb'y, 1858, for $29,000 with interest, &c.

3rd. One in favor of L. F. Generes, dated 3rd April, 1860, for $20,000, & interest.

4th. One in favor of J. W Burbridge & Co., dated 15th day of April, 1861, for the sum of $30,000, interest, &c.

5th. A judicial mortgage resulting from a judgment rendered in the second judicial district court of the State of Louisiana, parish of Jefferson, on the 17th day of November, 1865, for $5,000, interest, &c., in favor of Gaston Bruslé.

6th. A judicial mortgage in favor of Albin Rochereau, resulting from a judgment by the sixth district court of New Orleans, of the 15th March, 1866, for $35,900, and interest, as will more fully appear from the said certificateof mortgages.

142 And, on further suggesting to the court that the said purchaser, as representing the plaintiffs in execution, retained in his hands the sum of $49,104.95, in satisfaction of the judgment in the said case, and of the said execution, and paid into the hands of the said marshal the sum of $15,046.05 to satisfy the costs, taxes, and expenses incurred whilst the said plantation was under seizure, and for the sale thereof, and also various claims existing against the same, and made on account of law expenes and for the wages of freedmen, and to be disposed of according to law; and, on further suggesting to the court that a writ of attachment issued out of the 4th district court of New Orleans in a certain suit therein entitled Woodruff, Butler & Co. vs. Jonathan I. Caldwell, No. 17276 on the docket of said court, has been levied on the said sum of money paid into the hands of the said marshal as aforesaid, as will appear by reference to the said attachment, which is herewith presented;

143 And, on further suggesting to the court that the said sum of money is, as the said marshal*l* is informed & believes, subject to various claims in favor of the said mortgage-creditors under the mortgages mentioned in the certificate of mortgages, and to various privileges growing out of work done on the levees of the said plantation, and of the claims of the freedmen employed thereon;

And, on further suggesting to the court that the said marshal is without the power or right to settle and fix the amount or rank of said mortgage-claims and claims for levee dues and for freedmen's wages, &c., &c., and that the same can only be ascertained judicially:

It is ordered that the said marshal*l* do now pay the said sum of $15,046.05 into this honor'ble court to be disposed of according to law under the orders of said court.

144 *Mortgage-certificate annexed to the foregoing, and filed May 23rd,* **1866.**

STATE OF LOUISIANA,
Parish of St. Charles:

I, T. T. Bandoin, recorder of the parish of St. Charles, duly commissioned and qualified, do hereby certify that, at the date hereof there exist, recorded on my book of mortgages, in the name of Pierre Sauvé and affecting his plantation or landed property, situated in this parish and hereinafter described, no other mortgages than the following, to-wit:

1°. By an act passed on the 12th day of June, 1852, before Theodore Guyol, a notary public in the city of New Orleans, the said Pierre Sauvé consented and granted a mortgage in favor of Charles Anderson Jacobs, to secure the punctual payment of the following promissory notes, viz: Five promissory notes drawn to the order of, and endorsed by, the said Pierre Sauvé, dated on the 4th day of June, 1852, and made 145 payable at the Bank of Louisiana—four, for the sum of twenty-six thousand dollars each, in one, two, three, and four years, respectively, after date; and one for the sum of twenty-nine thousand one hundred & twenty dollars, in five years after date—all bearing interest after maturity at the rate of seven per cent. per annum till final payment.

Of those above-described notes, four (the first above described,) have been paid, and the above mortgage canceled to the extent and amount of the said four notes. Said mortgage was re-inscribed on the 15th day of May, 1865, and from a note in the mortgage-book opposite the re-inscription of said mortgage, it appears that three distinct efforts were made in order to obtain a re-inscription of the said mortgage, one prior to the 12th November, 1862, and two a short time thereafter, before the same could be effected.

2°. By an act passed on the 26th day of February, 1858, before the said notary, Mr. Pierre Sauvé granted a mortgage in favor of 146 Albin Rochereau, of the city of New Orleans, to secure the punctual payment of the following described notes, viz: Nineteen promissory notes—three for three thousand dollars each; three for two thousand dollars each; six for fifteen hundred dollars each; six for one thousand dollars each, and one for five thousand dollars—all drawn by the said Pierre Suavé to his own order, and by him endorsed, dated 26th February, 1858, and made payable one year after date, with interest from maturity till paid, at the rate of eight per cent. per annum.

3°. By an act passed before the said notary, Theo. Guyol, passed on the 3rd day of April, 1860, the said Pierre Sauvé granted a mortgage in favor of Louis F. Generes, of the city of New Orleans, to secure the payment of the sum of twenty thousand dollars, amount of eight promissory notes drawn by the said Pierre Sauvé, to his own order, and by him endorsed, dated 3d April, 1860—one for six thousand dollars; 147 two for twenty-five hundred dollars; one for twenty-four hundred and thirty-two dollars; one for twenty-two hundred dollars; one for fifteen hundred and sixty-eight dollars; one for fifteen hundred dollars; and one for thirteen hundred dollars—all bearing interest from maturity till paid, at eight per cent. per annum, and payable at the bank of Louisiana in one year after date.

4°. By an act passed on the 15th day of April, 1861, before the said Theodore Guyol, notary, Mr. Pierre Sauvé granted a mortgage in favor of Messrs. J. W. Burbridge & Co., of the city of New Orleans, a commercial firm, composed of J. W. Burbridge and Thomas D. Miller, to the extent of the sum of thirty thousand dollars, to secure the payment of all advances in cash & supplies, and to secure the said firm against all loss and damage, &c., which they may suffer or incur by reason of their acceptances, &c.; and also to secure to them the full and final payment of any and all sum & sums of money which may be due and 148 owing by the said Pierre Suavé to the said J. W. Burbridge & Co., together with all eventual interest and attorney's fees.

5°. From a judgment rendered on the 17th November, 1865, and signed on the 23rd day same month & year, by A. Cazabat, judge of the second jud'l dist. court of La., in and for the parish of Jefferson, in the case, Gaston Bruslé vs. Pierre Sauvé, No. 2606, of the docket of said court, there results a judicial mortgage against the said Pierre Sauvé, and in favor of the said Gaston Bruslé, for the sum of five thousand dollars, amount of a promissory note drawn by the said Pierre Sauvé, to his own order, and by himself endorsed, dated New Orleans, March 29th, 1860, payable one year after date, with interest, at the rate of eight per cent. per annum, from maturity till paid, and paraphed "Ne varietur," Theodore Guyol, notary in New Orleans, also for the sum of four dollars costs of copy of the act of mortgage, and five per cent. attorney's fees on the whole amount of said note and interest, and all costs of suit.

149 6°. From a judgment rendered by the sixth district court of New Orleans, on the 15th of March, 1866, in the case of Albin Rochereau vs. Pierre Sauvé, No. 18001 of the docket of said court, there results a judicial mortgage against the said Sauvé and in favor of Albin Rochereau for the sum of thirty-five thousand dollars, with eight per cent. per annum interest thereon from the 26th February, 1861, till final payment, five per cent. on said sum and interest for attorneys fees, five dollars costs of notarial act, and costs of suit, with *sepial* mortgage, to take effect from the 28th February, 1858, on the property described in plaintiff's petition.

All the above-recited mortgages except the "fourthly" described effect the following described plantation, viz:

A certain sugar-plantation situate in the parish of St. Charles, on the right bank of the river Mississippi, about twenty-one miles above city of New Orleans, and composed of two tracts of land, one having fourteen arpents front on said river, and extending in depth about seventy-
150 five arpents, and the other having four arpents and twenty toises
front on said river, by eighty arpents in depth, bounded above by the plantation of F. E. Wilson & Co., and below by that of Ezra Davis, together with the buildings and improvements, stock, cattle, horses, mules, &c., on said plantation, and a number of slaves, whose names and ages are fully described in each act of mortgage above-mentioned, then attached to said plantation.

The "fourthly" described mortgage effects not only the above-described plantation, &c., but also a certain tract of land belonging to the said Sauvé, situate in the parish of Jefferson, in this State, on the left bank of the Mississippi River, more fully described in said act of mortgage.

In faith whereof I have hereunto signed my name and affixed the seal of my office on this 31st day of March, 1866.

T. T. BANDOINN, *Recorder.*

Approved May 5th, 1866.
[SEAL.]

T. T. BANDOINN, *Recorder.*

151 United States circuit court fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be true copies of the originals of record and on file in the case of Edw. Dupasseur & Co. vs. Pierre Sauvé, No. 3395 of the docket of said court; and I further certify that the act of sale by Charles A. Jacobs to Pierre Sauvé, passed before Theo. Guyol, not., on the 12th June, 1852, a duly certified copy of which, marked "B," and made part of the petition, was filed on the 1st Dec., 1863, could not be found after diligent search.

Witness my hand and the seal of said court at New Orleans, this 18th day of December, A. D. 1867.

[SEAL.] (Signed) D. URBAN, *Clerk.*

Certificate marked "Y," offered in evidence by counsel for pl'ff.—Filed 18th *January*, 1868, *sixth district court, No.* 18274.

United States circuit court, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

152 I certify that the gross proceeds deposited in the registry in the case of E. Dupasseur & Co. vs. P. Sauvé, No. 3395,

Amount to	$15,046 05
That, by order of court, have been paid to C. Bullitt, U. S. marshal, for costs, &c	5,394 90
Leaving a balance of	$9,651 15

Nine thousand six hundred & fifty-one $\frac{15}{100}$ dollars in said registry.

Witness my hand and seal of said court at New Orleans, this 17th day of January, 1868.

[SEAL.] (Signed) F. B. VINOT, *D'y-Cl'k.*

Order: Case submitted—" Minutes," Saturday, 18*th January*, 1858.

A. ROCHEREAU
vs. } No. 18274.
E. DUPASSEUR.

This case came on again for trial—Charles A. Johnson & E. A. Bradford, for pl'ff; Roselius & Philips, for def't.

After hearing additional evidence and the arguments of counsel, the case was submitted and taken under consideration.

153 *Reasons for judgment.—Filed* 28*th January*, 1868.

Sixth district court.

ROCHEREAU
vs. } No. 18274.
DUPASSEUR.

In this case it is clear to my mind that, when the defendant purchased the Sauvé plantation sold by the United States marshal, he had lost the benefit of his mortgage upon the property, for want of re-inscription. In the case of Adle vs. Auty, 5 A., 634, the Supreme Court has decided that a suit by a mortgage will not do away with the necessity of re-inscribing a mortgage to preserve its rank. (See Hennen's Digest, p. 1296, S. 14.)

It is therefore ordered, adjudged, & decreed that the pl'ff in this case have judgt. against def't as prayed for with costs.

Judgment.

Sixth district court.

ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR. } No. 18274.

Judgment rendered January 28th, 1868.

154 For the reasons assigned in the written opinion of the court this day delivered and on file in this case—

It is adjudged and decreed that there be judgment herein in favor of plaintiff, Albin Rochereau, and against the defendant, Edward Dupasseur, declaring the property described in the plaintiff's petition affected in his hands with the mortgage set forth in said plaintiff's petition, and that he be ordered to pay to plaintiff the sum of forty-five thousand dollars, with eight per cent. per annum interest from the 26th Feb., 1861, until final payment, and five per cent. on the aggregate of said capital and interest, and the costs incurred in the suit No. 18001 of the docket of this court, or to relinquish and deliver up said mortgaged property to be sold according to law to satisfy the same. And that defendant pay the costs of this suit. Judgment signed 1st May, 1868.

(Signed) G. DUPLANTIER, *Judge.*

Rule for a new trial.—Filed & entered 31st Jan'y, 1868.

155

Sixth district court.

A. ROCHEREAU
vs.
E. DUPASSEUR. } No. 18274.

On motion of C. Roselius & Alfred Philips, of counsel for defendant, it is ordered that plaintiff do show cause, on Friday, the 14th day of Feb., 1868, at 10 o'clock a. m., why a new trial should not granted herein on the grounds following, to wit:

1. The judgment is contrary to the law and evidence.

2. The judgment rendered in favor of Jacob's heirs against Sauvé, recognized not only the existence of the vendor's privilege and special mortgage, but its rank. All the rights of the judgment creditor were merged in this judgment. There is no law requiring the inscription of a judgment for the preservation of the rights settled by it, even as against third persons.

3. Dupasseur was subrogated to the rights of the judgment creditor, and was not bound to re-inscribe a mortgage which was merged in his judgment. The cases referred to do not sustain the judgment of the court.

156 4. Long before the expiration of the time when re-inscription could be required, even in the absence of a judgment, the property was in the hands of the law, under the order of sequestration, in virtue of this very vendor's privilege and mortgage.

Sheriff's return on copy of rule.—Filed Feb. 8th, 1868.

Received February 1st, 1868, &, on the 6th of same month & year, served copy of the within motion for a new trial on A. Rochereau, through W. T. Hepp, esq., his attorney in fact. Returned same day.

(Signed) G. TOURNADE, *D'y Sh'ff.*

Order: Rule continued.—"Minutes," Friday, 14th February, 1868.

A. ROCHEREAU
vs. No. 18274.
E. DUPASSEUR.

This matter, fixed for this day, was, by consent, continued to Tuesday, 25th inst.

157 *Order: Rule continued.—"Minutes," Tuesday, 25th February, 1868.*

A. ROCHEREAU
vs. No. 18274.
E. DUPASSEUR.

The rule herein for a new trial came on this day; C. Roselius for plaintiff in rule; Johnson & Denis & E. A. Bradford for def't in rule.

After hearing argument of counsel,

Ordered, That the further hearing of said rule be continued to-morrow, the rule hour having expired.

Order: Rule submitted.—"Minutes," Wednesday, 26th Feb'ry, 1868.

A. ROCHEREAU
vs. No. 18274.
E. DUPASSEUR.

The rule herein for a new trial came on again this day; C. Roselius for plaintiff in rule; Johnson & Denis for defendant in rule.

After hearing argument of counsel, the rule was submitted, & the court took the same under advisement.

158 *Reasons for judgment on rule.—Filed 28th April, 1868.*

Sixth district court.

A. ROCHEREAU
vs. No. 18274.
E. DUPASSEUR.

In this case it is contended by the defendant that the judgment rendered against him by this court on the 28th of January last is erroneous, and he has moved for a new trial.

In his rule he raises two issues: one of fact and one of law.

He takes the position—1st, that the decree of the 3rd judicial dist. court for the parish of Jefferson, rendered on the 21st of November, 1859, in the case of Jacobs vs. P. Sauvé, was a final judgment, in which both Jacob's claim & mortgage against Sauvé merged.

And, 2ndly, that the merger did away with the necessity of re-inscribing, within 10 years from its first inscription, the Jacobs mortgage.

159 If the two propositions thus contended for by the defendant be true both in fact and in law, it is clear that the judgment of this court rendered against him is erroneous. But does the evidence in the cause sustain him, and will the law bear him out?

The first question raised is easily solved. By simply referring to the proceedings had in the case of Jacobs vs. Sauvé before the 3rd judicial dist. court of the parish of Jefferson, the mind rests satisfied that the decree rendered in that case on the 21st Nov., 1859, was not a final or definitive one. It is as follows:

"For the reasons assigned it is ordered, adjudged, & decreed that the defendant, Pierre Sauvé, do pay into the hands of the *hands of the* sheriff, to be held by him, subject to the further order of this court, the amount sued on, viz, the sum of twenty-nine thousand one hundred and
twenty dollars, with interest thereon, at the rate of 7 % per an-
160 num, from the 4th day of June, 1857. And it is further ordered
that further proceedings herein be suspended until the decision of the suit of George May vs. Pierre Sauvé, in the 4th dist. court of New Orleans, referred to in defendant's answer."

This decree, it seems, was provoked by a rule previously taken in the cause by Jacobs upon Sauvé. It awarded nothing to the plaintiff Jacobs or to anyone else. It was declaratory of no right, deprived the defendant, Sauvé, of non', nor did it assign any to the plaintiff. Indeed, it did not pass upon any of the points in controversy between the parties on the merits of the suit of Jacobs vs. Sauvé. It simply required the amount claimed by Jacobs to be brought into court to await the issue of the cause to which it referred.

Surely such a decree was not intended to be a final one—nor
161 was it of that character. It was to all intents & purposes an in-
terlocutory judgment and must be as such.

Article 538 of the code of practice defines interlocutory judgments to be those decrees which are pronounced on preliminary matters in the course of judicial proceedings but do not decide on the merits of the cause.

On the other hand the following article of the same code is equally explicit in describing final or definitive judgments. It says they are those decrees which decide all the points interlocutory between the parties to a suit. They are such as have the force of res judicata.

In other words a final or definitive judg't is one which is rendered by a court of competent jurisdiction, and which decides the cause before the court upon its merits.

It is clear, then, that the judg't of the 3rd judicial dis't court of
162 the parish of Jefferson, being an interlocutory decree and not a
final one, which did not decide the suit of Jacobs vs. Sauvé on its merits; neither Jacobs' claim nor his conventional mortgage have merged in it; and here the inquiry as to whether the defendant in this controversy is entitled to a new trial or not might well rest.

But the defendant resists upon a decision on the second point raised by his rule, and I will now proceed to consider it as if the judgment of the 3rd judicial dis't court of Jefferson had been a final decree and as if a merger in it of the Jacobs mortgage had taken place.

The second question raised by the defendant's rule when briefly stated is as follows:

Is it necessary for the preservation of the effects of a conventional
mortgage against third parties to re-inscribe it within 10 years,
163 dating from its first inscription, when the mortgage has merged
in a judgment rendered by a court of competent jurisdiction in a suit brought by the mortgagee against the mortgager for the recognition of his mortgage rights?

The defendant contends that the merger of the mortgage in the judgment supersedes the necessity of the inscription. Indeed, he goes much beyond this. Taking the position that the notarial act, which is the evidence of the conventional mortgage, ceases by the process of merger to exist in the eye of the law the very moment when the mortgagee obtains his judgment against the mortgager, he argues that the inscription or re-inscription of the act thenceforward becomes a legal impossibility.

In deciding the question I will at once state that the correctness of the doctrine of merger, so far as it goes, will not be denied; in fact, it
will be admitted. The courts have long since and often decided
164 that a judgment is the highest evidence of a claim or right, and
that the original title to the claim or right merges in the judgment. (See Abat vs. Buisson, 9 L., 418; Oakey vs. Murphy, 1 A., 372; Samallez vs. His Creditors, 3 A., 388; & Dennistown vs. Payne, 7 A., 334.) But I conceive that the defendant misapplies the doctrine and much too far extends it in the present instance by failing to make a proper discrimination between a mortgage-right as regards the immediate parties mortgagee & mortgagor and the same right as it effects third persons.

It is also apprehended that he has confounded the evidence of a conventional mortgage against the parties to the obligation, with the evidence of the binding effect of the same obligation upon strangers to it.

A mortgage is a species of alienation. It conveys to the mortgagee
a right on the property subjected to it, but not the property itself,
165 the title to which, as well as the possession, remains in the owner.
It has been truly said by the counsel for the plaintiff that its most important bearings, when it is a conventional one, are to be found in its effects against third persons. As an obligation accessory to a principal one, it is binding upon the immediate parties to it and their heirs or assigns, without the formality of inscription; but to make it effective against third parties, the law requires that it should be spread upon the public records of the country, the mortgage-office, in which it must be re-inscribed at least every 10 years.

Now, if the theory of the defendant be correct that the merger of a conventional mortgage, in the judgment rendered in a suit of the mortgagee against the mortgager for the recognition of the mortgage, suspends the necessity of a re-inscription of the obligation to preserve
its effects against third persons, this would certainly operate the
166 complete overthrow of the whole system of registration of mort-
gage organised by our laws. At once our courts of justice would be converted into mortgage-offices, and the public might well become alarmed at this sad state of affairs. But, most fortunately, things have not come to this crisis. Whatever may be the effects of a judgment on a mortgage-right, as between the parties to the judgment, these effects cannot be extended to persons utterly strangers to the judgment. As to these, it is res inter alios judicata. It produces no effect, and is of no avail.

Moreover, according to the defendant's own theory, what merges in the judgment which a mortgagee obtains in a suit against a mortgager for the recognition of his mortgage? Nothing beyond the evidence of the mortgagee's obligation, as against his mortgager. So far as the
proof of the effect of the mortgage, as against third persons, that
167 remains undisturbed and unimpaired.

Had the plaintiff, in the present case, been a party to the suit of Jacobs vs. Sauvé, and had the suit culminated into a final judgment recognising the existence of the Jacobs' mortgage, it might then been a question, under the defendant's theory of merger, whether the judg't was not sufficiently binding upon the pl'ff as to have superseded the necessity of re-inscribing the mortgage within 10 years from its first inscription. But, as it is, and considering the fact that the plaintiff was altogether a stranger to the suit, the judg't has produced no effect; and, as to him, it is as if it had never been rendered. It has left his rights undisturbed.

For these reasons it is now ordered and decreed that the rule herein taken on the 31st of January, 1868, by the defendant be dismissed, and that a new trial of the cause be refused.

168 *Order: Rule dismissed.—"Minutes," Tuesday, 28th April,* 1868.

ROCHEREAU
vs. } No. 18274.
DUPASSEUR.

In this case for the reasons assigned in the written opinion of the court, this day delivered and filed.—

It is ordered that the rule herein taken on the 3d January, 1868, by the defendant for a new trial, be dismissed, and the new trial refused.

Petition for an appeal.—Filed June 25th, 1868.

Sixth district court.

A. ROCHEREAU
vs. } No. 18274.
E. DUPASSEUR.

The petition of Edward Dupasseur, def't in the above case, residing in New Orleans, respectfully represents that he has been informed & believes that there is error to his prejudice in the final judgment 169 rendered in the above-entitled case by this hon. court, on 28th January, 1868, & signed on the 1st May, 1868, and that he is desirous of appealing the same to the supreme court of Louisiana.

Wherefore he respectfully prays that a devolutive appeal may be accorded to him from said final judgment to the supreme court of Louisiana, to be returnable therein, according to law, & upon his giving bond & surety, conditioned according to law; and that said plaintiff, Albin Rochereau, be duly cited & served according to law; and he prays for general relief, and as in duty bound, &c., &c.

(Signed) C. ROSELIUS & ALFRED PHILIPS.

Order of appeal.

Let this petition be filed, and let a devolutive appeal be granted in this case, returnable to the hon. supreme court on the 1st Monday of November, 1868, on the petitioner giving bond with good & solvent security conditioned according to law, in the sum of three hundred dollars.

New Orleans, June 25th, 1868.

170 (Signed) PAUL E. THEARD,
Judge 4th District Court, acting in lieu of Judge G. Duplantier, absent, sick.

Bond of appeal.—Filed 25th June, 1868.

THE STATE OF LOUISIANA:

Know all these presents that we, Edward Dupasseur, as principal, and P. Maspero as surety, are held and firmly bound unto Albin Rochereau, executors, administrators, and assigns, in the sum of three hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 25th day of June, in the year of our Lord one thousand eight hundred and sixty-eight.

171 Whereas the above-bounden Edward Dupasseur, this day filed a petition of appeal from a final judgment, rendered against him in the suit of Albin Rochereau vs. Edward Dupasseur, in the sixth district court of New Orleans, on the 28th day of January, 1868:

Now, the condition of the above obligation is such, that the above-bound Edward Dupasseur shall prosecute said appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal, otherwise that the said P. Maspero, surety, shall be liable in his place.

(Signed) EDWARD DUPASSEUR. [L. S.]
" P. MASPERO. [L. S.]

State of Louisiana, sixth district court for the parish of Orleans.

172 "I," William Woelper, clerk of the sixth district court for the parish of Orleans, do hereby certify that the above and foregoing one hundred and ninety-five pages do contain a full, true, and complete transcript of all the proceedings had, of all the documents filed, and of all the testimony and evidence adduced on the trial of the cause, wherein Albin Rochereau is plaintiff, and Edward Dupasseur is defendant, instituted in this court, and now on the records thereof under the number 18274.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and in the ninety-third year of the Independence of the United States of America.

[SEAL.] (Signed) W'M WOELPER, *Clerk.*

173 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR. } No. 1909.

Citation of appeal and return.—Filed June 30th, 1868.

ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR. } No. 18274. 6th dist. court.

The State of Louisiana, sixth district court of New Orleans.

To Mr. ALBIN ROCHEREAU, greeting:

Whereas Edward Dupasseur has, on the 25th day of June, filed in the office of the clerk of the sixth district court of New Orleans, a peti tion of appeal from a certain final judgment rendered in the said court against him, which appeal is returnable in the supreme court, for the State aforesaid, on the first Monday in November, 1868:

174 You are, therefore, hereby cited to appear, in person or by attorney, in the said court, on the day last aforesaid, to answer the said appeal.

Witness the Honorable Paul E. Theard, acting judge of the court aforesaid, this 26th day of June, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) W'M WOELPER, *Clerk.*

Rec'd, June 26th, 1868, and, on the same day, same month and year, served a copy of the within citation of appeal, and accompanying petition of appeal on Albin Rochereau, through C. T. Dugazon, esq'r., his att'y in fact.

Ret'd same day.

(Signed) G. TOURNADE,
D'y-Sh'ff.

Transcript of appeal.—Filed Nov'r 4th, 1868.

(See page 1.)

Motion for certiorari.—Minutes, Thursday, December 16th, 1869.

175 The court was duly opened. Present, their honors James G. Taliaferro, W. G. Wyly, William W. Howe, associate justices. Absent, John T. Ludeling, chief justice; Rufus K. Howell, associate justice.

A. ROCHEREAU
vs.
E. DUPASSEUR. } No. 1909.

On motion of Johnson & Denis, and Bradford, Lea & Finney, of counsel for the plaintiff & appellee, and, on suggesting to the court that the transcript of appeal in this case is, on the face of it, incomplete through the omission of an important piece of documentary evidence, which has not been copied into the transcript—

It is ordered by the court that three days be allowed to complete the same, and supply the said omission.

176 *Motion for certiorari.—Certified copy for service on the clerk of the sixth district court for the parish of Orleans.*

Supreme court of the State of Louisiana.

CLERK'S OFFICE,
New Orleans, December 16, 1869.

A. ROCHEREAU
vs.
E. DUPASSEUR. } No. 1909.

On motion of Johnson & Denis, and Bradford, Lea & Finney, of counsel for the plaintiff & appellee, and, on suggesting to the court that the transcript of appeal in this case is, on the face of it, incomplete through the omission of an important piece of documentary evidence, which has not been copied into the transcript—

It is ordered by the court that three days be allowed to complete the same, and supply the said omission.

I hereby certify the foregoing to be a true and faithful extract from the minutes of the day, month, and year first above written.

177 In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, on this the 16th day of December, A. D. 1869.

[SEAL.] (Signed) M. P. JULIAN,
Deputy-Clerk.

DEC'R 18TH, 1869.

Service accepted.
(S'g'd) W'M WOELPER, *Clerk.*

Writ of certiorari.

Supreme court of the State of Louisiana.

CLERK'S OFFICE, *New Orleans, Dec'r 16th*, 1869.

A. ROCHEREAU
vs. No. 1909.
E. DUPASSEUR.

To the clerk of the 6th district court for the parish of Orleans, greeting:

Whereas it has been suggested to this court that the transcript of appeal in the above entitled and numbered suit is incomplete and defective, and the court having ordered a certiorari to issue:

Now, therefore, you are hereby commanded in the name of the 178 State of Louisiana and of this hon. court to correct and complete said transcript of appeal, in conformity to the accompanying certified motion, and return the whole, properly certified, to this court within days from this date.

Witness the Hon. J. G. Taliaferro, presiding judge of this hon. court, on this the day, month, and year first above-written.

[SEAL.] (Signed) M. P. JULIAN,
Dep'y-Clerk.

DEC'R 18TH, '69.

Service accepted.
(Signed) W'M WOELPER, *Clerk.*

Continuance.—Minutes, Saturday, December 18th, 1869.

The court was duly opened. Present, their honors James G. Taliaferro, W. G. Wyly, William W. Howe, associate justices. Absent, John T. Ludeling, chief justice; Rufus K. Howell, associate justice.

ALBIN ROCHEREAU
vs. No. 1909.
EDWARD DUPASSEUR.

179 This case was ordered by the court to be continued with preference.

Additional transcript.—Filed January 15, 1870.

ROCHEREAU }
vs. } No. 18274. Sixth district court.
DUPASSEUR. }

Certificate of mortgage against Pierre Sauvé.

STATE OF LOUISIANA,
Parish of St. Charles:

I, T. T. Bandonin, recorder of the parish of St. Charles, State of Louisiana, duly commissioned and qualified, do hereby certify that, at the date hereof, there exist recorded in the *the* office of mortgages of this parish in the name of and against Mr. Pierre Sauvé affecting a certain sugar-plantation, situate in the parish of St. Charles, on the right bank of the Mississippi River, at about twenty-one miles above the city of New Orleans, and composed of two tracts of land, one measuring fourteen arpents front on said river, and extending in depth about
180 seventy-five arpents, more or less, bounded on the lower line by
the property of Massicot, lately belonging to E. Reine, and the other tract measuring four arpents & twenty toises, more or less, front on said river, by a depth of eighty arpents, adjoining on the upper line the plantation of George Rixirer, and on the lower line the tract first described, together with the buildings, improvements, mill, machinery, stock, horses, mules, farming-utensils, &c., and also the slaves then attached to said plantation and fully described in the acts mentioned below, no other than the following mortgages, to wit:

By an act passed on the 12th day of June, 1852, before Theodore Guyol, a notary public in the city of New Orleans, and recorded in the mortgage-office of the parish of St. Charles, on the eighth day of July, 1852, the said Pierre Sauvé specially mortgaged & hypothecated the above-described plantation, &c., &c., in favor of Charles Anderson Jacobs to secure the punctual payment of five promissory notes drawn to the order of and endorsed by said Pierre Sauvé, dated on the
181 4th day of June, 1852, and payable at the Bank of Louisiana, as
follows: Four for the sum of twenty-six thousand dollars each, in one, two, three, & four years, respectively, after date, and one for the sum of twenty-nine thousand one hundred & twenty dollars, in five years after date, all bearing interest after maturity at seven per cent. per annum till final payment, which mortgage has been cancelled to the amount and extent of the four promissory notes first described, each for the sum of twenty-six thousand dollars, and said mortgage was re-inscribed on the fifteenth day of May, eighteen hundred & sixty-five.

NOTA.—And there appears in the margin of said re-inscription of the above mortgage the following memorandum, viz: "It appears by the annexed certificate of the re-inscription in conveyance-book that three distinct efforts were made—one prior to the 12th Nov., 1862, and two a short time thereafter—by the holder of the mortgage-note, E. Dupasseur, to have said act re-inscribed, and the same could not be
182 done in consequence of the absence of the proper officer.
(Signed) PETER J. KRAMER, *Recorder*."

By an act passed on the 26th day of February, 1858, before the above-named notary, and recorded in the mortgage-office of this parish on the

20th day of March, 1858, and re-inscribed on the 14th day of November, 1867, the said Pierre Sauvé mortgaged and hypothecated the above-described plantation, &c., in favor of Albin Rochereau, of the city of New Orleans, to secure the punctual payment of the sum of thirty-five thousand dollars, amount of nineteen promissory notes—three for three thousand dollars each; six for fifteen hundred dollars each; six for one thousand dollars each; and one for five thousand—all drawn by said Pierre Sauvé to his own order, and by him endorsed, dated on the 26th of February, 1858, payable one year after date, with eight per cent. interest per annum from maturity till paid.

By an act passed on the 3rd day of April, 1860, before the said notary, and recorded in the mortgage-office of *of* this parish on the
183 25th day of July, 1860, the said Pierre Sauvé mortgaged and
hypothecated the above-described plantation, &c., &c., in favor of L. F. Generes, of the said city of New Orleans, to secure the punctual payment of the sum of twenty thousand dollars, amount of eight notes drawn by said Pierre Sauvé to his own order, & by him endorsed, dated 3rd April, 1860—one for six thousand dollars; two for twenty-five hundred dollars each; one for twenty-four hundred & thirty-two dollars; one for fifteen hundred & sixty-eight dollars; one for fifteen hundred dollars; and one for thirteen hundred dollars—all bearing interest from maturity till paid, at eight per cent. per annum, and payable at the Bank of Louisiana, in one year after date.

By an act passed on the 15th of April, 1861, before the said notary, said Pierre Sauvé, mortgaged and hypothecated the said plantation, &c., &c., in favor of Messrs. J. W. Burbridge & Co., of the city of New Orleans, to secure the payment of the sum of thirty thousand dollars; which act was recorded in the mortgage-office of this parish on the 2nd December, 1861.

184 From a judgment rendered on the 17th November, 1865, &
signed on the 23 of the same month & year by A. Cazabat, judge 2nd judicial district court of Louisiana in and for the parish of Jefferson, and recorded in the office of mortgages of said parish of St. Charles, on the 26th December, 1865, there results a judicial mortgage against said P. Sauve in favor of Gaston Brusle, of Paris, France, for the sum of five thousand dollars, amount of a note drawn & endorsed by said Pierre Sauvé, dated New Orleans, March 29th, 1860, and payable one year after date, with interest, at eight per cent. per annum, from maturity till paid; four dollars cost of copy of act of mortgage; five per cent. attorney's fees on the amount of said note & costs of suit.

And from another judgment rendered and signed on the 15th of March, 1860, by the Hon. G. Duplantier, judge of the sixth district court of New Orleans, and recorded on the 24th March, 1860, in the mortgage-office of this parish of St. Charles, there results a judicial
mortgage against the said Pierre Sauvé and his property in this
185 parish in favor of Albin Rochereau, of the city of New Orleans,
for the sum of thirty-five thousand dollars, with eight per cent. per annum interest from the 26th February, 1861, until final payment; five per cent. on said sum of $35,000 & interest for attorney's fees; five dollars cost of notarial act & costs of suit with special mortgage to take effect from the 28th February, 1858, on the plantation, &c., &c., described in the act of mortgage.

In faith whereof I have signed these presents on this 26th day of December, 1867, at my office in the parish of St. Charles.

[SEAL.] (Signed) T. T. BONDONIN,
Recorder.

Clerk's office sixth district court for the parish of Orleans.

Clerk's certificate.

ALBIN ROCHEREAU, APPELLEE,
vs.
EDWARD DUPASSEUR, APP'T. } No. 18274.

In compliance with the annexed writ of certiorari, I, William Woelper, clerk of the sixth district court for the parish of Orleans, 186 do hereby certify that the foregoing one hundred & ninety-five pages first above written do contain a full, true, and complete transcript of all the proceedings had, of all the documents filed, and of all the testimony & evidence adduced on the trial of the cause, wherein Albin Rochereau is plaintiff, and Edward Dupasseur is defendant, instituted in this court, and now on the records thereof under the No. 18274, except the document mentioned in the minute of the evidence offered by the defendant, under date of 13th December, 1867; which minute is found on page 68 of the foregoing transcript, & there designated as follows: "Also certificate of mortgages, to be produced;" that the said document has never been furnished me by the said defendant, & for that reason was not included in said transcript. And I do further certify that, since the service on me of the aforesaid writ of certiorari, I have applied to Mess. Roselius & Philips, counsel for the 187 defendant, and Mess. Johnson & Denis, counsel of the plaintiff herein, and requested them to furnish me the said document; that Mess. Roseluis & Philips have declined to do so; but that Mess. Johnson & Denis, in answer to my said application, have furnished me a document, whereof a true & complete copy is annexed to this return.

In testimony whereof I have hereunto set my hand & affixed the seal of the said court, at the city of New Orleans, this 15th day of January, in the year of our Lord one thousand eight hundred & seventy, and in the ninety-fourth year of the Independence of the United States of America.

[SEAL.] (Signed) W'M WOELPER, *Clerk.*

Motion to dismiss.—Filed January 18, 1870.

A. ROCHEREAU
vs.
E. DUPASSEUR. } No. 1909. Supreme court.

187 Plaintiff and appellee, by the undersigned, of counsel, moves the court that the appeal herein be dismissed, for this:

That the transcript of appeal herein, as brought up and filed by the appellant, is defective on its face, by reason of the omission of a document offered in evidence by the appellant, being the document mentioned in the minute of his evidence (p. 68) as to be produced; and that it further appears, by the certificate of the clerk of the lower court, annexed to said transcript, and bearing date January 15th, 1870, that the appellant had declined to produce the same, though requested to do so by that officer.

(Signed) JOHNSON & DENIS,
LEA, FINNEY & MILLER,
Att'ys.

Continuance.—"Minutes," Monday, March 28th, 1870.

The court was duly opened, pursuant to adjournment.

189 Present, their honors John T. Ludeling, chief-justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

ALBIN ROCHEREAU *vs.* EDWARD DUPASSEUR. } No. 1909.

The trial of the motion to dismiss the appeal herein was ordered by the court to be continued and fixed for Monday, April 11th, 1870.

Motion submitted.—"Minutes," Monday, April 11th, 1870.

The court was duly opened, pursuant to adjournment.

Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, W. G. Wyly, William W. Howe, associate justices. Absent, Rufus K. Howell, associate justice.

190 ALBIN ROCHEREAU *vs.* EDWARD DUPASSEUR. } No. 1909.

This case was called for trial of the motion to dismiss the appeal; whereupon the same was submitted to the court upon the motion, the briefs for both parties, and the papers now on file.

Continuance.—"Minutes," Saturday, April 16th, 1870.

The court was duly opened.

Present, their honors James G. Taliaferro, W. G. Wyly, William W. Howe, associate justices. Absent, John T. Ludeling, chief justice; Rufus K. Howell, associate justice.

ALBIN ROCHEREAU *vs.* EDWARD DUPASSEUR. } No. 1909.

This case was called for trial, and C. A. Johnson, esq., having submitted the same to the court, without argument on the part of plaintiff & appellee—

191 The court ordered the case to be continued to Monday, 25th instant, for argument of counsel on behalf of the defendant & appellant herein.

Continuance.—"Minutes," Monday, April 25th, 1870.

The court was duly opened pursuant to adjournment. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

ALBIN ROCHEREAU *vs.* EDWARD DUPASSEUR. } No. 1909.

This case was called for resumption of trial from Saturday, 16th instant, and the court having heard argument from C. Roselius, esq., of counsel for defendant & appellent, and the usual hour for the adjournment of the court having arrived—

The court ordered the same to be continued to to-morrow, Tuesday 26th instant, for resumption of argument.

192 *Case submitted.—" Minutes," Tuesday, April 26th,* 1870.

The court was duly opened. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

ALBIN ROCHEREAU
vs. } No. 1909.
EDWARD DUPASSEUR.

This case was called for resumption of trial from yesterday, Monday 25th instant, and the court, having listened to argument from C. Roselius esq., of counsel for defendant & appellant—

Took the same under advisement upon the briefs for both parties and the papers now on file, and the supplemental briefs to be filed on behalf of appellant by counsel within one week herefrom.

Extension.—" Minutes," Monday, May 9th, 1870.

193 The court was duly opened. Present, their honors, John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William W. Howe, associate justices. Absent, W. G. Wyly, associate justice.

ALBIN ROCHEREAU
vs. } No. 1909.
EDWARD DUPASSEUR.

On motion of Roselius & Philips of counsel for defendant & appellant,

It is ordered by the court that a further extension of three days herefrom be granted appellant within which to file additional briefs.

Decree.—" Minutes," Monday, May 23, 1870.

194 The court was duly opened, pursuant to adjournment. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell W. G. Wyly, William W. Howe, associate justices.

His honor, Justice Howell pronounced the judgment and decree of the court in the following case.

ALBIN ROCHEREAU
vs. } No. 1909.
EDWARD DUPASSEUR.

On appeal from the 6th district court for the parish of Orleans.

It is ordered that the judgment appealed from be affirmed.

Opinion of the court.—Filed May 23d, 1870.

A. ROCHEREAU
vs. } No. 1909.
E. DUPASSEUR.

Appeal from the sixth district court for the parish of Orleans.

Mr. Justice HOWELL delivered the opinion of the court in the words and figures following, to wit:

195 The plaintiff seeks to enforce against the property of defendant,
a third possessor, a mortgage which was recorded on 20th
March, 1858.

The defendant holds by virtue of a sale made under a judgment recognizing a mortgage and vendor's privilege, inscribed on 8th July, 1852, and re-inscribed on 15th May, 1865.

He contends that this re-inscription was made as soon as it was possible for him to do so; and he introduced proof that unsuccessful efforts were made, from May to November or December, 1862, to get a permit from the military commander in this city to go to the parish of St. Charles, where the property is situated, to re-inscribe the mortgage. In December the permit was obtained and a messenger sent to attend to it, but the court-house was locked up, and the key in possession of
the sheriff or his deputy, who were absent. Two similar efforts
196 were afterwards made with like result. The recorder's office was
open in September, 1864. The re-inscription was made in May,
1865. There was then a time during which it could have been made, even if the causes shown would have excused the defendant and served the effect of inscription.

He contends further that a judgment rendered by the second judicial district court, in the case of Jacobs vs. Sauvé, the original vendor and vendee, ordering the money claimed to be brought into court, superceded the necessity of re-inscription, as a judgment is the highest evidence of a claim, and all other evidence of the debt or other legal right, is merged in the judgment.

This is a confounding of the evidence of a debt with an act of mortgage securing the debt; and, by art. 3333, C. C., a re-inscription can be
made only in the manner that the inscription is made.

197 But he contends that, as to plaintiff, a reinscription was un-
necessary because in his act of mortgage, the one under which defendant holds was recited, and plaintiff cannot be considered a third person, but is affected with knowledge and bound as though he were a party under articles 3314, 3315, 3316, C. C.

This point was directly put in the case of Britton & Koontz vs. Janney, 21 An., 204, and decided adversely to the position of defendant herein. It was in these words: "The re-inscription of their mortgage was rendered unnecessary by the inscription of the Shaw mortgage, wherein their note and mortgage were clearly set forth;" that is, as counsel say in this case, by an acknowledgement of defendant's mortgage by plaintiff himself in an authentic act to which he is a party, and under which he claims his mortgage-rights, a re-inscription was rend-
ered unnecessary. The Shaw mortgage, in the case cited, must have
198 contained a recital and acknowledgement of the Britton & Koontz
mortgage, to the same purport and effect as that of the plaint-
iff here. It was held, in said case, that this did not operate a re-in-

scription of the acknowledged mortgage, nor supply the omission to re-inscribe as the law requires, and for the object intended. Mrs. Shaw, by the said recital in her act of mortgage, had the same knowledge of Britton & Koontz mortgage as plaintiff Rochereau had by the like recital and acknowledgement in his act of the existence of the defendant's mortgage. The failure to re-inscribe in such case, produces the same effect, that is, the loss of the rank held by the mortgage, which should have been re-inscribed.

A re-inscription is necessary, and it must be made in the manner prescribed, art. 3333 of the Code. To adopt the theory of defendant, would be an evasion, if not a total overthrow, of our system of registration, established by existing laws.

199 In the case of Havang vs. Plattsmier, (21 A., 427,) we held that knowledge is not equivalent to registry in Louisiana, but that under the law as it now stands, which must control, art. 3315, 3316, if inconsistent, an unrecorded act of mortgage is utterly null and void, except between the parties to the act, and we have concluded to adhere to that ruling. Rochereau, the plaintiff, was not a party to the act between Jacobs and Sauvé, under which the defendant, Dupasseur, holds.

All the questions of law raised, in this case, have been passed on by this court, and are considered settled.

The motion to dismiss is unfounded.

It is therefore ordered that the judgment appealed from be affirmed.

200 *Clerk's certificate.*

UNITED STATES OF AMERICA.
Supreme Court of the State of Louisiana :

I, John Miller Howell, clerk of the Supreme Court of the State of Louisiana, holding sessions at the City of New Orleans, do hereby certify that the foregoing one hundred and ninety-nine (199) pages, contain a true copy of the transcript of the proceedings had in the sixth district court for the parish of Orleans, in a certain suit wherein Albin Rochereau was plaintiff and Edward Dupasseur was defendant, and also of the proceedings had in this Supreme Court on the appeal taken by said Edward Dupasseur, which appeal is now on the files thereof, under No. 1909.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 30th day of October, anno Domini, one thousand eight hundred and seventy-two, and in the 97th year of the Independence of the United States of America.

[SEAL] JNO. M. HOWELL, *Clerk.*

201 UNITED STATES OF AMERICA, *ss :*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting :

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or one of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Albin Rochereau, plaintiff, and Edward Dupasseur, defendant, wherein was drawn in question a right and title under an authority exercised under the United States, and the decision was against the right and title specially set up, a manifest error hath happened, to the great damage of the said Edward Dupasseur, defendant, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) Supreme Court of La. No. 1919. Albin Rochereau versus Edward Dupasseur. Writ of error. Allocatur. Joseph P. Bradley, associate justice Supreme Court U. States, June 29th, 1872. Filed July 15th, 1872. M. P. Julian, dep'y-cl'k supr. court.

202 ALBIN ROCHEREAU
vs.
EDWARD DUPASSEUR. } No. 1909.

Supreme court of the State of Louisiana.

To the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States of America:

The petition of Edward Dupasseur, defendant and appellant in the above-entitled cause, with respect, represents that he is ag'rieved by the final judgment rendered in this cause against him on the of May, 1870; that he set up and claimed as a defense to plaintiff's action, a right and title under an authority exercised under the United States, and the decision aforesaid of this honorable court was against such right and title so specially set up and claimed, that is to say, defendant claimed and set up title to the property in controversy, through 203 a sale made to him by the United States marshal, under a decree of the United States circuit court in and for the 6th circuit and district of Louisiana; and the decree complained of was against the title and right so set up; that the amount involved exceeds two thousand dollars. And inasmuch as the statute of the United States, and the act of February 5th, 1867, gives to him the right to a writ of error in the premises, and to have said final judgment reviewed in the Supreme Court of the United States—

And suggesting that the writ of error prayed for cannot operate as a supersedeas, and that the bond for writ of error ought to be for costs merely, petitioner prays that a writ of error may be allowed as provided for by law upon his giving bond for costs, &c.

W'M GRANT, *Att'y.*

204 The above petition is granted, and a writ of error as prayed is allowed by—

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court, United States.

JUNE 29TH, 1872.

205 Let the writ be granted as prayed for, on the said Edward Dupasseur, plaintiff in error, giving bond, and in the sum of $250, with good & solvent security, conditioned as the law directs. New Orleans, La.

Chief Justice Supreme Court of the State of Louisiana.

(Indorsed:) No. 1909. Supreme Court for State of Louisiana. Albin Rochereau vs. Edward Dupasseur. Petition for a writ of error. Filed July 15th, 1872. M. P. Julian, dep'y-cl'k supr. court. W'm Grant, att'y for pl'ff in error.

206 The United States of America to Albin Rochereau, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Edward Dupasseur is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Edward Dupasseur, plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

207 J. W. Gurley, jr., being duly sworn, says that he served the within writ of error on Albin Rochereau, on the 16th day of July, 1872, by serving an original duplicate copy thereof into the hands of Cha's T. Dugazon, at his office, No. 18 St. Louis street,—the said Rochereau being absent from the United States, and he, the said Cha's T. Dugazon, being then his legal representative, duly authorized to represent him and defend this suit.

J. W. GURLEY, JR.

Sworn to & subscribed before me this 25 Nov'ber, '72.

[SEAL.] K. LOEW, *U. S. C.*

(Indorsed:) Supreme court of La. No. 1909. Edward Dupasseur vs. Albin Rochereau. Citation. Marshal's return.

208 STATE OF LOUISIANA,
Parish of Orleans, ss:

William Grant, being duly sworn, says that he has signed the bond filed for writ of error in the suit of Albin Rochereau vs. Edward Dupasseur, No. 1909, supreme court of La.; that he resides in Orleans Parish, and that he is worth over ten thousand dollars over and above his debts and liabilities, and that he has real estate standing in his own name, unincumbered, to the value of five thousand dollars.

WILLIAM GRANT.

Sworn and subscribed to before me this 27th day of June, 1872.
[SEAL.] R. H. SHANNON,
U. S. Comm'r.

209 (Indorsed:) To be returned & filed with the writ of error in Sup. C't U. S. J. P. B. Filed 15th July, 1872. M. P. Julian, dep'y-cl'k sup. court.

210 Know all men by these presents that we, Edward Dupasseur, as principal, and William Grant, as sureties, are held and firmly bound unto Albin Rochereau in the full and just sum of two hundred & fifty dollars, to be paid to the said Albin Rochereau or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this day of in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately, in the supreme court of the State of Louisiana in a suit depending in said supreme court, wherein Albin Rochereau was plaintiff and Edward Dupasseur was defendant, judgment was rendered against the said Edward Dupasseur, defendant, and the said Edward Dupasseur having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Albin Rochereau, defendant, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the 1st Monday of December next:

Now, the condition of the above obligation is such, that if the said Edward Dupasseur, defendant, shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD DUPASSEUR. [L. S.]
WILLIAM GRANT. [L. S.]
[L. S.]

Sealed and delivered in the presence of—
J. W. GURLEY, jr.

Approved:

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

(Indorsed:) Supreme court of La. No. 1909. Albin Rochereau vs. Edward Dupasseur. Bond for writ of error. Filed July 15th, 1872. M. P. Julian, dep'y-clerk sup. court. John W. Madden, stationer and printer, 73 Camp st.

(Indorsement on cover:) No. 586. Edward Dupasseur, plaintiff in error, vs. Albin Rochereau. Louisiana sup. court. Filed 10th December, 1872.

○

Supreme Court of the United States.

DECEMBER, 1872.

No. 586.

EDWARD DUPASSEUR, Plaintiff in Error,

vs.

ALBIN ROCHEREAU, Defendant.

In error to the Supreme Court of the State of Louisiana.

LOUIS JANIN,
Of Counsel for Defendant in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

DECEMBER, 1872.

EDWARD DUPASSEUR, Plaintiff in Error, *vs.* **ALBIN ROCHEREAU**, Defendant. } No. 586.

In error to the Supreme Court of the State of Louisiana.

MOTION TO DISMISS.

The undersigned, counsel for the defendant in error, proposes to move the Court, on the 25th April, 1873, to dismiss this writ of error for want of jurisdiction, having more than three weeks before that date given notice of this motion to Thomas J. Durant, Esq., the counsel for the plaintiff, and served upon him at the same time a copy of this argument.

ARGUMENT.

This is a writ of error to the Supreme Court of Louisiana. According to the well-settled jurisprudence of this Court, it presents no Federal question, but simply the question of the construction of a statute of the State of Louisiana, of which this Court will not take cognizance under the 25th section of the judiciary act of 1789.

The questions which arose in this case before the Supreme Court of the State of Louisiana are best understood by reading that decision, which we accordingly transcribe in this brief.

In Delmas *vs.* Insurance Company (14 Wall., 667) this Court held very lately that "it has been long settled that under the act of 1824, and by reason of the peculiarity of the practice of the courts in that State, the opinions of the Appellate Court of Louisiana are treated by us as part of the record, and are looked into to learn what they decided when their judgments were brought here by writ of error."

SUPREME COURT OF THE UNITED STATES—DECEMBER TERM, 1872.

EDWARD DUPASSEUR, Plaintiff in Error,
vs.
ALBIN ROCHEREAU.
No. 586.

EXTRACT FROM RECORD.

Opinion of the Court, filed May 23d, 1870.

A. ROCHEREAU
vs.
E. DUPASSEUR.
No. 1909.

Appeal from the sixth district court for the parish of Orleans.

Mr. Justice Howell delivered the opinion of the court in the words and figures following, to wit:

The plaintiff seeks to enforce against the property of defendant, a third possessor, a mortgage, which was recorded on 20th March, 1858.

The defendant holds by virtue of a sale made under a judgment recognizing a mortgage and vendor's privilege, inscribed on 8th July, 1852, and re-inscribed on 15th May, 1865.

He contends that this reinscription was made as soon as it was possible for him to do so, and he introduced proof that unsuccessful efforts were made from May to November or December, 1862, to get a permit from the military commander in this city to go to the parish of St. Charles, where the property is situated, to reinscribe the mortgage. In December the permit was obtained, and a messenger sent to attend to it, but the court-house was locked up and the key in possession of the sheriff or his deputy, who were absent. Two similar efforts were afterwards made with like results. The recorder's office was open in September, 1864; the reinscription was made in May, 1865. There was then a time during which it could have been made, even if the causes shown would have excused the defendant and served the effect of inscription.

He contends, further, that a judgment rendered by the second judicial district court in the case of Jacobs *vs.* Sauvé, the original vendor and vendee, ordering the money claimed to be brought into court, superseded the necessity of inscription, as a judgment is the highest evidence of a claim, and all other evidence of the debt or other legal right is merged in the judgment.

This is a confounding of the evidence of a debt with an act of mortgage securing the debt, and by art. 3333 C. C. a reinscription can be made only in the manner that the inscription is made.

But he contends that as to plaintiff a reinscription was unnecessary, because in his act of mortgage the one under which defendant holds was recited, and plaintiff cannot be considered a third person, but is affected with knowledge, and bound as though he were a party, under articles 3314, 3315, 3316, C. C.

This point was directly put in the case of Britton & Koontz *vs.* Janney, 21 An., 204, and decided adversely to the proposition of the defendant herein. It was in these words: "The reinscription of their mortgage was rendered unnecessary by the inscription of the Shaw mortgage wherein their note and mortgage were clearly set forth," that is, as counsel say in this case, by an acknowledgment of defendant's mortgage by plaintiff himself, in an authentic act to which he is a party, and under which he claims his mortgage rights, a reinscription was rendered unnecessary. The Shaw mortgage in the case cited must have contained a recital and acknowledgment of the Britton & Koontz mortgage to the same purpose and effect as that of the plaintiff here. It was held in said case that this did not operate a reinscription of the acknowledged mortgage, nor supply the omission to reinscribe as the law requires, and for the object intended. Mrs. Shaw, by the said recital in her act of mortgage, had the same knowledge of Britain & Koontz' mortgage, as plaintiff. Rochereau had, by the like recital, an acknowledgment in his act of the existence of the defendant's mortgage. The failure to reinscribe in such case produces the same effect, that is, the loss of the rank held by the mortgage which should have been reinscribed.

A reinscription is necessary and it must be made in the manner prescribed. (Art. 3333 of the code.) To adopt the theory of defendant would be an evasion, if not a total overthrow, of our system of registration, established by existing laws.

In the case of Harang *vs.* Plattsmier, 21 A., 427, we held that knowledge is not equivalent to registry in Louisiana, but that under the law, as it now stands, which must control arts. 3315, 3316, if inconsistent, an unrecorded act of mortgage is utterly null and void, except between the parties to the act, and we have concluded to adhere to that ruling. Rochereau, the plaintiff, was not a *party* to the act between Jacobs and Sauvé, under which the defendant Dupasseur holds.

All the questions of law raised in this case have been passed on by this court and are considered settled.

The motion to dismiss is unfounded.

It is therefore ordered that the judgment appealed from be affirmed."

From this statement of the Supreme Court it appears that this action is what is called in the civil law an hypothecary action, the nature of which in Louisiana is very clearly shown by the following articles of the Code of Practice of Louisiana:

Art. 61. An hypothecary action is a real action, which the creditor brings against the property which has been hypothecated to him by his debtor, in order to have it seized and sold for the payment of his debt.

Art. 62. The hypothecary action, like all real actions, follows the property to which it is attached, in whatever hand it may be found, but it is subject to different rules, according as the property may be in the possession of the debtor, of his heirs, or of third persons.

* * * * *

Art. 68. If the hypothecated property be neither in the possession of the debtor nor of his heirs, but in that of a third person, the creditor has his action against that person in order to compel him either to give up the property, or pay the amount for which it stands hypothecated. This is the hypothecary action, properly speaking.

Art. 69. If, thirty days after the amicable demand, made from the debtor or his heirs, of the payment of an hypothecary debt, it has not been fully discharged, the creditor may bring his action against the third possessor of the property hypothecated to him, to have it seized and sold, if that third possessor have not, within the ten days after having been notified of such a demand, paid the amount of the hypothecary debt, including the interest and costs.

Art. 70. But the creditor, who brings this action, must declare on oath, in the petition, that the debt for which he demands the seizure of the hypothecated property, is really due to him, and that he has in vain demanded payment from his debtor, thirty days previous to his bringing his suit.

* * * * *

Art. 74. Third possessors of property which has been seized, owing to their failure of discharging the amount of the hypothecary debt within ten days after having been notified that payment has been demanded of the hypothecary debt, may, until the very day of the sale, recover possession of the hypothecated property, by paying the debt with interest, and all the costs incurred in the suit.

The only part of the opinion of the supreme court of Louisiana which it is necessary to consider at the present time is that which states, that Albin Rochereau, (the original plaintiff, now defendant in error,) sought to enforce against the property of defendant, (previously belonging to Pierre Sauvé,) a mortgage, which was recorded on the 20th of March, 1858. This property was held by the original defendant, now plaintiff in error, by virtue of a sale made under a judgment recognizing a mortgage and vendor's privilege, inscribed on the 8th of July, 1852, and reinscribed in May 15, 1865. The supreme court of Louisiana decided that the mortgage of Dupasseur recorded on July 8, 1852, was lost by his failure of having it reinscribed within ten years from its original date, under the authority of article 3333 of the Civil Code: "The registry preserves the evidence of mortgages and privileges during ten years, reckoning from the day of their date; their effect ceases, even against the contracting parties, if the inscription has not been renewed before the expiration of this time, in the manner in which they were first made."

The original defendant, now plaintiff in error, contended, in the words of the supreme court of Louisiana, that as to the (then) plaintiff, (now defendant in error,) a reinscription was unnecessary, because in his act of mortgage the one under which the defendant (Dupasseur) holds, was recited, and plaintiff cannot be considered a third person, but is affected with knowledge, and bound, as though he were a party, under articles 3314, 3315, and 3316 of the Civil Code.

The supreme court of Louisiana held otherwise, and decided that, notwithstanding notice to the younger mortgagee, nothing could preserve the older mortgage but a reinscription under the act of C. C. 3333, which no knowledge could supply. The Supreme Court supports this conclusion by reference to two of its own decisions, that in Britton & Koontz *vs.* Janney, 21 Ann., 204, and Harang *vs.* Plattsmier, 21 Ann., 427, which present precisely the same circumstances of too-long delayed reinscription and notice to the subsequent mortgagee, as the case now before the court. In the case of Robinson & Cruzat *vs.* Haynes, 19 A. R., 133, the same court held "that an inscription ceases to be the evidence of the mortgage after the lapse of ten years, and is not subject to the rules of prescription."

To these cases might also be added those of Britton & Koontz *vs.* Norment, 20 A. R., 508; Orleans Co. *vs.* Shepherd, 2 A. R., 166; Hyde *vs.* Bennett, 2 A. R., 797.

We come now to the petition for the writ of error. It is applied for as being within the provisions of the act of Congress of February 5, 1867, amending the judiciary act of 1789, providing for cases "where is drawn in question the validity of a treaty or statute of, or *an authority exercised under*, the United States, and the decision is against their validity," or "where is drawn in question," &c., &c.

The petition alleges "*that Dupasseur set up and claimed, as a defence to our suit, a right and title under an authority exercised under the United States, and that the decision was against such right and title; that is to say, defendant claimed and set up title to the property in controversy through a sale made to him by the United States marshal, under a decree of the United States circuit court, &c,, &c., and the decree complained of was against the title so set up.*"

From the articles which have been copied into this brief from the Code of Practice of Louisiana, it is apparent that in an hypothecary action no question of title is involved; the defendant, on the contrary, is sued *because* he holds the title to the property which is subject to the mortgage.,

The United States marshal, who in a suit pending between private parties in a United States circuit court, under a judgment rendered therein for a sum, seizes and sells the property of the defendant, is no more an authority of the United States than a sheriff in a civil court; nor is he or even the circuit court an authority to determine, between different mortgagees, their relative ranks, when only one is before them.

Whether the decision of the supreme court of Louisiana in this case was right or wrong on the merits, is perfectly immaterial for the purposes of this motion to dismiss the writ of error. This writ of error presents in reality nothing but a question of the interpretation of a statute of Louisiana, and is one of those not unfrequent cases that come to this court from Louisiana by writ of error to the supreme court of that State, where the scope and purport of the 25th section of the judiciary act of 1789, and of the act of 1867, amendatory thereof, are misunderstood. The object for which this act was passed was to settle by the adjudications of the highest tribunal, Federal questions throughout the country, and not to regulate the local jurisprudence of each State. Thus in Havemeyer *vs.* Iowa, (13 Wall.,) the court held, that "the jurisdiction of the 25th section, as heretofore stated, does not extend to decisions made by the State courts. These decisions are not within the description of cases where is drawn in question the validity of a statute."

Thus a number of cases have come to this court by writ of error to the supreme court of Louisiana, in which the decisions of that supreme court on the merits were contrary to the decisions of this court on the same question, and the writs of error have always been dismissed, if the decisions rested upon the jurisprudence of the State, and not expressly and exclusively upon the constitution of 1868.

In Bethel *vs.* Demarest, 10 Wall., 53, the court say: "The suit was brought by Bethel against the defendants in a district court of the State, to enforce a mortgage given to secure the payment of two notes of $7,500 each, given by them for the loan of Confederate money on 2d April, 1862."

The supreme court (of Louisiana) say, in their opinion in that case, "that he, the plaintiff, is endeavoring to enforce a contract, the consideration of which is Confederate currency. The nullity of contracts founded on that unlawful currency, has frequently been determined."

And this court thus concludes its opinion in that case: "As no Federal question appears in the record, the motion to dismiss must be granted:

In the case of the Western Bank of Tennessee *vs.* The Citizens' Bank of Louisiana, the court held:

> "In passing upon the validity of a contract, the consideration of which was Confederate money, the supreme court of Louisiana say: 'Under the constitution of 1868 the courts of this State cannot entertain any action based upon transactions in Confederate notes, and the court has often refused to lend its aid in transactions reprobated by law.'"

On motion to dismiss the writ of error which had been issued under the 25th section, this court held that the decision of the State court was founded 'alike upon the constitutional provisions and prior adjudications, which are numerous and conclusive on the subject;' and that the result would have been necessarily the same if the constitution had not contained the provision in question. They therefore granted the motion to dismiss, holding that the case fell within the authority of Bethel *vs.* Demarest, *supra.* (Western Tennessee Bank *vs.* Citizens' Bank, 13 Wall., 432.)

At the same term of the supreme court, December, 1871, there came up another Louisiana case, which presented precisely the same facts as the case of the Tennessee Bank *vs.* The Citizens' Bank, and the motion to dismiss was granted on December 20, 1871. It was thought unnecessary by the court to give any reasons for a point so well established, and the case was not printed.

In the case of Delmas *vs.* Insurance Co., 14 Wall., 665, the supreme court of Louisiana had decided that a judgment was void, because the consideration was Confederate money.

This case coming up from the supreme court of Louisiana by writ of error, the Supreme Court of the United States state that, in the case of Thorington *vs.* Smith, it had decided that a contract was not void because payable in Confederate notes, and proceed: "The proposition involved in this conclusion, however, does not of itself raise one of the *Federal questions* which belong to this court to settle conclusively for all other courts. Where a decision on that point, whether holding such contract valid or void, is made upon the general principles by which courts determine whether a consideration is good or bad on principles of public policy, the decision is one we are not authorized to review. Like in many other questions of the same character, the Federal courts and the State courts, acting within their own spheres, deciding their own judgments, are not amenable to each other."

The case of Palmer *vs.* Marston, 14 Wall., 113, presented the case of a promissory note given for slaves, which the supreme court of Louisiana declared could not be recovered under art.

128 of the La. Con. of 1868. That court (of Louisiana) said, (14 Wall., 113.):

> "The rule that such contracts will not be enforced by the courts of this State, was established by our jurisprudence in 1867. It was finally settled and repeatedly acted upon before the adoption of the constitution of 1868, and has been invariably adhered to ever since."

After quoting this passage the Supreme Court of the United States proceeds: "It thus appears that the provision of the State constitution upon the subject of slave contracts was in no wise drawn in question. The decision was governed by the settled principles of the jurisprudence of the State. In such cases this court has no power of review. No right was claimed by either party under any State law or the constitution of the State, which was resisted upon the ground of repugnancy to the Constitution, or a treaty, or law, of the United States, the decision having been in favor of the validity of the right so asserted. There is certainly no foundation for such a complaint on the part of the plaintiff in error. In the absence of such a claim and decision we cannot take cognizance of the case. This element, which is indispensable to our jurisdiction, is wanting. Substantially the same question arose in "The Bank of West Tennessee *vs.* The Citizens' Bank of Louisiana. The writ of error was dismissed for want of jurisdiction. The same disposition must be made of this case."

The jurisprudence of this Honorable Court on the only question presented by this motion seems, therefore, so clearly and so consistently settled, that the undersigned forbears from pursuing the subject further, and merely repeats the proposition that this writ of error should be dismissed.

LOUIS JANIN,

Of Counsel for Defendant in Error.